

## **Appendix 3**

### **Contract Standing Orders**

#### **1 General Provisions**

All officers of the Council (including: Agents, Consultants and Contractors of the Council who carry out procurements) are subject to these Contract Standing Orders.

#### **1.1 Regulatory and Legislative context**

1.1.1 Every contract made by, or on behalf of, the Council must comply with the EU Treaty (which prohibits discrimination against goods, suppliers and service providers), World Trade Organisation agreements, EU Public Procurement Directives, the Local Government Act 1999 and all relevant EU and other domestic legislation, regulations or legally binding guidance, the Council's Constitution and these Standing Orders.

1.1.2 All procurement activity must be carried out not only in accordance with these Standing Orders but also in compliance with the Council's Financial Standing Orders, Best Practice Guides and other relevant guidance as published by the Director of Finance and Resources, or designated deputy.

1.1.3 The Director of Finance and Resources, or designated deputy, may, from time to time, issue Procurement Instructions on matters concerning procedural advice, codes of practice and best practice guidance which will explain but not override any provision in these Contract Standing Orders, unless authorisation in writing has been given by the Chief Executive or the Mayor and Cabinet. Failure to follow a Procurement Instruction issued in accordance with this Standing Order will be considered a breach and subject to Standing Order 1.1.5.

1.1.4 Chief Officers are responsible for ensuring compliance with these procedural instructions and with the detailed processes set out in the Council's Procurement intranet pages, within their Directorate and within the timescales specified in the instructions. If no timescale is specified the instruction is to be implemented with immediate effect.

1.1.5 It is the responsibility of all Officers to report any breach of Contract Standing Orders of which they become aware to their Chief Officer and the Corporate Director of Legal, HR and Regulatory Services as Monitoring Officer. The Chief Officer is required to report any breach to the Corporate Director of Legal, HR and Regulatory Services and to the Director of Finance and Resources, or designated deputy. A breach of these Standing Orders may result in the application of the Council's disciplinary procedures.

#### **1.2 Conduct of Officers and Members**

1.2.1 All Members, Chief Officers and Officers must carry out their duties having

regard to relevant, current Codes of Conduct in force in the Council and all appropriate legislation such as the Bribery Act 2010.

1.2.2 All Members, Chief Officers or Officers involved in the letting of contracts are expected to seek best value for money and continuous improvement, and to behave in a demonstrably fair and even handed manner whatever the contract value. 'Value for Money' is the optimum combination of whole-life costs and quality to meet the Council's defined requirements.

1.2.3 All Members, Chief Officers, or Officers who may have, or may appear to have, a conflict of interest in the award or management of a contract shall declare this to the Corporate Director of Legal, HR and Regulatory Services and must take no part in any decision making or other process with regard to that contract.

1.2.4 No Member, employee or agent of the Council shall improperly use their position to obtain any personal or private benefit from any Contract entered into by the Council. This includes the accepting of gifts or hospitality of any nature and/or value either pre, during or post the contracting activity, unless this is pre-approved by the appropriate Chief Officer and entered onto the appropriate Hospitality Register within each Directorate. Guidance can be found within the Council's Code of Conduct and Officers' Code of Conduct.

### **1.3 Effective Period and Reviews**

1.3.1 These Contract Standing Orders shall be effective from the date of adoption by Full Council and will be reviewed periodically as required but in their entirety once every five years by the Director of Finance and Resources and the Corporate Director of Legal, HR and Regulatory Services.

### **1.4 Partnering Agreements**

1.4.1 The Contracting Officer must seek advice from the Hackney Procurement Service when considering the development of a Collaborative or Partnering approach to a contract. Unless the terms and conditions are drawn up specifically for the purpose of a Collaborative or Partnering contract, this approach will have no legal status and will only define the behaviour and approach within the formal Contract rather than to supersede or add to any legal responsibilities inherent within the Contract.

1.4.2 No arrangement which is stated as being "Partnering" or "Partnership" should have the legal status this implies under the Partnership Act 1890.

### **1.5 Tender and Contract Documents**

1.5.1 Where procurements are above the EU Threshold all procurement documents, including the draft contract, must be available at the time the contract opportunity is advertised via an OJEU advert. All Tender Documents including Conditions of Contract, or (where Standard Forms of Contract are used) associated contractual documents must include certain

clauses to protect the Council. These are that;

- a) The Council may terminate a Contract on the grounds of;
  - a. Insolvency of the Contractor.
  - b. Corruption.
  - c. Collusive tendering.
  - d. Breach of Contract Conditions
  - e. Breach of any part of the EU Public Procurement Directives
- b) the consequences of any termination are provided for.
- c) equalities and diversity matters are covered according to the Council's 'Equality and Diversity Policy' and the Council's 'Corporate Equality Plan' and its responsibilities under the Equality Act 2010, the Race Relations (Amendment) Act 2000, the Sex Discrimination (Gender Reassignment) Regulations 2003, the Equal Pay (Amendment) Regulations 1983, the Pensions Act 1995, the Employment Equality (Age) Regulations 2006, the Human Rights Act 1998, the Statutory Code of Practice on Racial Equality in Employment 2006 and all other relevant legislation and any statutory modification or re-enactment of such legislation during the life of these Standing Orders.
- d) The Council will have due regard to the Public Services (Social Value) Act 2012 and the Modern Slavery Act 2015 as amended from time to time when procuring Contracts for Services.
- e) there is provision for the recovery of sums due to the Council.
- e) the Contractor's rights to assign and sub-contract are properly controlled.
- f) the arrangements for payments are properly defined. Any payment due from the Council to a Contractor under a contract is to be made no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed. Such terms of payment shall be included in any further sub-contract entered into by the Contractor and thereafter by any further sub-contractors.
- g) the Council is not committed to accept the lowest, or any, tender.
- h) Insurance & Indemnity incl. professional indemnity where applicable. (This should be discussed on an individual base with the Head of Insurance to ascertain the appropriate level of cover for the contract – The Risk Assessment, completed at the Business Case stage, must be sent to the Head of Insurance as soon as possible).
- i) In respect of all other clauses, Contracting Officers are responsible for considering all aspects of the intended contract and ensuring that clauses are incorporated in their documentation to cover all appropriate matters. Standard contract conditions are published on the

procurement pages of the Council's intranet and must be used where relevant. The advice of a Directorate Procurement Manager or the Corporate Director of Legal, HR and Regulatory Services must be sought:

- a. in the event of any query concerning the applicability of standard contract conditions, or
- b. regarding the guidance published under Contract Standing Order 1.5.2 below, or
- c. if amendment of the Council's standard documents or drafting bespoke contract specific clauses are contemplated.

1.5.2 The Corporate Director of Legal, HR and Regulatory Services, after consultation with the Director of Finance and Resources, or designated deputy, may approve standard procurement documents for use by the Council and to issue instructions on the precise form of contract to be used for a procurement.

## **1.6 Financial Parameters**

1.6.1 Where monetary figures are specified in these Standing Orders:

- a. The Director of Finance and Resources shall review them at least as frequently as once in every financial year.
- b. They shall be without prejudice to the financial thresholds of the EU Procurement Directives which shall take precedence.

1.6.2 Where monetary figures refer to Contract values against which an estimate of Contract expenditure is made, the requirements shall not be artificially split to avoid competition, neither shall:

- a. any other form of disaggregating be accepted for similar purposes.
- b. a department or section of the Council be permitted to regard itself as a 'discrete operational unit' within the terms of EU Procurement Directives, unless specifically approved by the Council.

1.6.3 These Standing Orders relate to the estimated value over the term of a Contract (or over four years if the term is four years or longer) and in estimating the Contract value the Contracting Officer shall take account of historic cost and an assessment of future trends, or, where the requirement is new, the best estimate of value available at the time.

1.6.4 All monetary values referred to within this document are total contract values, not annual values, and exclude Value Added Tax unless otherwise stated.

1.6.5 Contracts must be packaged appropriately to achieve maximum value for the Council. They must never be split in order to avoid quotation or tendering limits in these Standing Orders or EU Public Procurement thresholds or any other requirements of these Standing Orders, or packaged in any way to

reduce the potential for fair and open competition.

- 1.6.6 The value of a contract should be estimated in good faith and with due care and attention. Where the estimated value is within 10% of either the thresholds within Contract Standing Orders or the EU Public Procurement thresholds, advice must be sought from the Hackney Procurement Service (HPS).
- 1.6.7 If it becomes evident during the procurement process that the likely value of the contract will either exceed one of the thresholds in Contract Standing Order 1.6.6, or will exceed the original estimate by more than 10%, advice must be sought from the HPS.
- 1.6.8 The Council may decide to advertise a contract in the form of separate lots and may determine the size and subject-matter of such lots. The Council shall provide an indication of the main reasons for any decision not to subdivide into lots, which shall be included in the procurement documents for any above EU threshold contract.

## **1.7 Budgetary Provision**

- 1.7.1 No order shall be placed or tender invited unless there is sufficient budgetary provision for the minimum term of the contract intended to be entered into. Any report must clearly identify a cost estimate and whether the funding is from Capital, Revenue or from another source.

## **1.8 Bonds or Guarantee**

- 1.8.1 A Performance Guarantee Bond or Parent Company Guarantee may be required having taken due account of risks involved for the Council. The Contracting Officer shall consider whether there is a need to require the provision of the bond and/or parent company guarantee. Advice should be sought from the HPS.
- 1.8.2 Where a Contract is expected to exceed £250,000 then the Contracting Officer shall consult with the Director of Finance and Resources, or designated deputy, as to whether a bond or guarantee is required.

## **1.9 Electronic Auctions**

- 1.9.1 Where goods, services or works are purchased by use of electronic means that require the successful contractor to be notified immediately at the termination of the electronic process and in receipt of a signed contract within a significantly reduced time period, Contracting Authority and Gateway exemption must be obtained in advance.
- 1.9.2 Exemption under Standing Order 2.92 can only be obtained for Gateway Contract Award report. However a retrospective report must be submitted to the next available Cabinet Procurement Committee or Procurement Board, depending on the applicable contracting process.

- 1.9.3 Where an electronic auction is permitted, activities for post tender assessment shall be carried out prior to the closing of the auction.

## **1.10 Grant Funded Expenditure**

- 1.10.1 Where the Council is the Accountable Body for expenditure under Grant Funded Initiatives and the timescale for the Grant expenditure precludes adherence to the Gateway Process and these Standing Orders, the Chief Executive and the Director of Finance and Resources, or designated deputy, shall solely have the authority to authorise necessary contract expenditure, provided always that:

- a. authorisation is granted in relation to specific contracts and specified amounts
- b. the best practicable observance of the Gateway procedure has been adopted
- c. the action is permissible in law
- d. EU requirements prohibiting State Aid (see Contract Standing Order 1.10.2 below); and
- e. the matter is reported to the next available meeting of the Hackney Procurement Board or Cabinet Procurement Committee or Cabinet as appropriate.

- 1.10.2 State Aid is a complex area and legal advice must always be sought if it is considered that State Aid may be an issue. Breaching State Aid rules can lead to the requirement to repay with interest all monies that comprise the aid.

- 1.10.3 All Projects will be classified into categories, which then determine the most appropriate procurement route for the project. The category classifications are:

- a) Grants
- b) Matched funding
- c) Allocation of Funds to Directorates
- d) Frameworks
- e) Non Frameworks

- a. Grants – where a project is to be funded as a grant, the Council will not apply the procurement processes, except for the fact that as part of the grant agreement, the Council would oblige money expended by the project from the grant sum to be spent in accordance with appropriate EU and UK procurement laws and regulations and the conditions of the grant.

- b. Matched Funding – Where the Council is the monitory funder, the same process is to apply as for Grants above. Where the Council is the majority funder, the project team or Grant

Manager will assume responsibility for procurement process in accordance with the Frameworks and Non Frameworks options.

- c. Allocation of Funds to Directorates – The project team or Grant Manager assumes no responsibility for the procurement processes followed by Directorates, except as part of the conditions for award of funding. Directorates are obliged to purchase in accordance with EU procurement law and the processes described in Frameworks and Non Frameworks below.
- d. Frameworks – For those projects not classified as any of the above, the project team or Grant Manager (and Directorates as described above) will assume full responsibility for the procurement process and so far as possible fulfil their requirements from existing frameworks.

## 1.11 Application of the EU Procurement Rules

1.11.1 A main factor affecting the application of EU Procurement rules is the value of the supplies, services, or works that are provided or undertaken for the organisation. In valuing a contract or transaction it is also necessary to consider whether the “aggregation” rules apply. In principle the relevant value for threshold purposes is the value of each individual contract. However, in certain circumstances it is necessary to add together the value of purchases made under a number of similar contracts. In essence this means that the value to be used is the greater of:

- a. The individual contract value.
- b. The total value of a series of similar contracts.
- c. The total value of the contract if it is renewed in accordance with the terms of the contract.

1.12.2 The highest value must always be used and “estimates” must be genuine. Contracts must not be sub-divided, or split to try and avoid the application of the rules. Note that dividing the work among two or more suppliers/contractors/service providers does not avoid application of the rules. This must be read within the context of Contract Standing Order 1.6.8.

1.12.3 In estimating the contact value, the aggregation rules of the EU Directives should be used. Where the estimated value is within 10% of the EU Public Procurement thresholds, advice must be sought from the HPS. Deliberate disaggregation of any development scheme or procurement to avoid the application of the Public Procurement Directives will be treated as a disciplinary offence.

1.12.4 All Services are regulated by the EU Procurement Directives but certain Services such as Health, Social Care and Legal Services are subject to a “light touch” regime. Advice from the HPS should be sought with regards to

the procurement of any such Services

## **1.12 Consortia Procurement**

- 1.12.1 Where the Council is acting as the lead authority in a consortium for the procurement of goods, works or services, these Contract Standing Orders will be applicable.
- 1.13.2 Where the Council is participating in a consortium for the procurement of goods, services or works, the Director of Finance and Resources, or designated deputy, and the Corporate Director of Legal, HR and Regulatory Services, or designated deputy, shall satisfy themselves that the procurement process being followed provides at least the same level of comfort and security to the Council as its own Contract Standing Orders and that a proper process has been followed in respect of EU Procurement Directives where the value of the contract is above the threshold.
- 1.13.3 Where goods, services or works are purchased, by another public body on behalf of the Council or by the Council through a contract, properly let by another such organisation in accordance with Standing Order 2 then this shall be deemed as having satisfied the requirement or competition.

## **1.13 Disposal of Assets**

- 1.13.1 Subject to compliance with Financial Procedure Rules and any instructions of the Director of Finance, Chief Officers have authority to dispose of all materials, plant, machinery, fittings, equipment, stocks or stores which because of damage, wear or obsolescence are no longer serviceable for the purposes for which they are held or are surplus to the Council's requirements. Any salvageable or useable items or parts must be sold in the best available market and at the best price reasonably obtainable;
- a) Where the outcome from the disposal of an asset exceeds £6,000 the disposal must be reported to the Director of Finance or designated deputy for accounting purposes and accounted for as a capital receipt.
  - b) Where the likely income from any disposal exceeds £10,000, then the arrangements for such disposal must be approved by the Director of Finance prior to any negotiations commencing.
  - c) Assets acquired under operational leasing arrangements must not be disposed of during the period of the lease; any subsequent disposal of obsolete equipment will need to be subject to negotiation between the Director of Finance and the leasing company.
  - d) In all cases, records must be maintained of disposals to ensure assets can be properly accounted for.
- 1.13.2 The off-hire and disposal of vehicles must be undertaken by the Director of



Finance and Resources or designated deputy.

- 1.13.3 The disposal of property, land or interests in land is dealt with under separate provision determined by the Director of Finance and Resources.

#### **1.14 Responsibilities**

- 1.14.1 The Chief Executive, Directors and Service Heads (referred to collectively in these Standing Orders as “Service Managers”) and all other Managers and Supervisors must ensure that their staff are aware of and have access to these Standing Orders and other issued Procurement Instructions at all times.
- 1.14.2 There shall always be a Chief Officer responsible for a Contract throughout the Contract term as well as during its formation
- 1.14.3 No officer may carry the responsibility of both the Chief Officer and the Contracting Officer for the same contract. Any suitable officer, however, may carry either responsibility on their own providing that it has been properly delegated to them in accordance with these Standing Orders.
- 1.15.4 Any officer may discharge both the duties of a Contracting Officer and a Contract Manager for the same Contract at the discretion of the Chief Officer, the Chief Officer having first considered the desirability of any separation of duties.

#### **1.15 Duties**

- 1.15.1 The duties that fall under the responsibility of the Chief Officer, Contracting Officer, Contract Manager and other officers with defined responsibilities under Contract Standing Orders are defined and set out within the Procurement and will be incorporated into the Scheme of Delegation as set out in the Council’s intranet pages..

#### **1.16 Procurement of Vehicles (Fleet)**

- 1.16.1 The procurement of all Council Vehicles (through purchase, hire or lease) must be undertaken by the Director of Finance and Resources or designated deputy, or other Executive Director having responsibility for Corporate Fleet Management, or nominated deputy.

#### **1.17 Partnerships and Partnering Agreements**

- 1.17.1 For any Partnering arrangements where the Council is the accountable body, the Council’s Contract Standing Orders apply. To ensure proper use of funds paid from the Council into partnership arrangements officers should ensure that the procurement framework of the partnership is broadly comparable to the Council’s. The proposed arrangements must be agreed with the Director of Finance and Resources or designated deputy.

- 1.17.2 Where the Council proposes to enter into a Partnering Agreement with a Contractor, the Gateway Process shall be applied to the selection process.
- 1.17.3 Where the Council proposes to participate as a Partner in an arrangement that may generate Revenue or incur financial or operational liability, this proposal must be considered through the Gateway Process and the written advice of the Corporate Director of Legal, HR and Regulatory Services and the Director of Finance and Resources obtained regarding the legal and financial ability of the Council's to trade or to provide the services required. The resulting agreement will be considered a Partnering Agreement.

## **2 Procurement Procedures**

- 2.1 These Standing Orders outline 5 procurement routes to be followed for all procurement activity within the London Borough of Hackney:-
- a) Single Tender;
  - b) De minimis;
  - c) Low Risk Contract;
  - d) Medium Risk Contract; and
  - e) High Risk Contract;

### **2.2 Single Tender**

- 2.2.1 Procurement by virtue of a single tender action may only be permitted when either:
- a) By reason of regulation or legislation only one supplier of the Product or service exists;
  - b) Only a Proprietary Product or Service is suitable, or is acceptable to external customers, or the Product or Service consists of repairs or works to an existing Proprietary Product or Service, where by reason of intellectual property rights there is only one supplier;
  - c) The value of the Contract is below the relevant EU threshold and the Chief Officer can demonstrate to the Director of Finance and Resources, or designated deputy, why a single tender action affords the Council Best Value;
  - d) In exceptional cases of such extreme urgency that a Tender process cannot be undertaken;

And in all cases, there is not a suitable existing contract or framework agreement (See Section 5 below).

In all the above cases, where the value of the proposed procurement is below £100K, the Contracting Officer must submit a written case to the Chief Officer and, subject to acceptance of the case, retain a copy of the written agreement with the contract documents. The Chief Officer must always have regard to Standing Orders 1.2 and 2.2.1 when considering the request and shall retain a written record of their consideration. The Chief Officer will on a

quarterly basis submit a copy of all single tenders authorised by them to the Director of Finance and Resources or nominated deputy, and these decisions shall be regularly reported to Cabinet by the Director of Finance and Resources in the Overall Financial Position Report.

2.2.3 In all the above cases, where the value of the proposed procurement is £100,000 or more, the Chief Officer and the Contracting Officer must submit a written case to the Director of Finance and Resources, or designated deputy, and, subject to acceptance of the case, retain a copy of the written agreement with the contract documents. The Director of Finance and Resources must always have regard to Standing Orders 1.2 and 2.2.1 when considering each request and shall retain a written record of their consideration. These shall be regularly reported to Cabinet by the Director of Finance and Resources in the Overall Financial Position Report.

2.2.4 In all such cases above the Contract Officer must;

- a) Specify the Product in writing;
- b) Where only one Tenderer is identified, to ensure the best price and conditions are negotiated and that these are recorded;
- c) Ensure that provisions for the adjustment in price, volumes or other variable factors have been agreed and recorded in writing;
- d) Ensure there are provisions for effective performance management and termination; and
- e) Be mindful of Standing Order 1.5

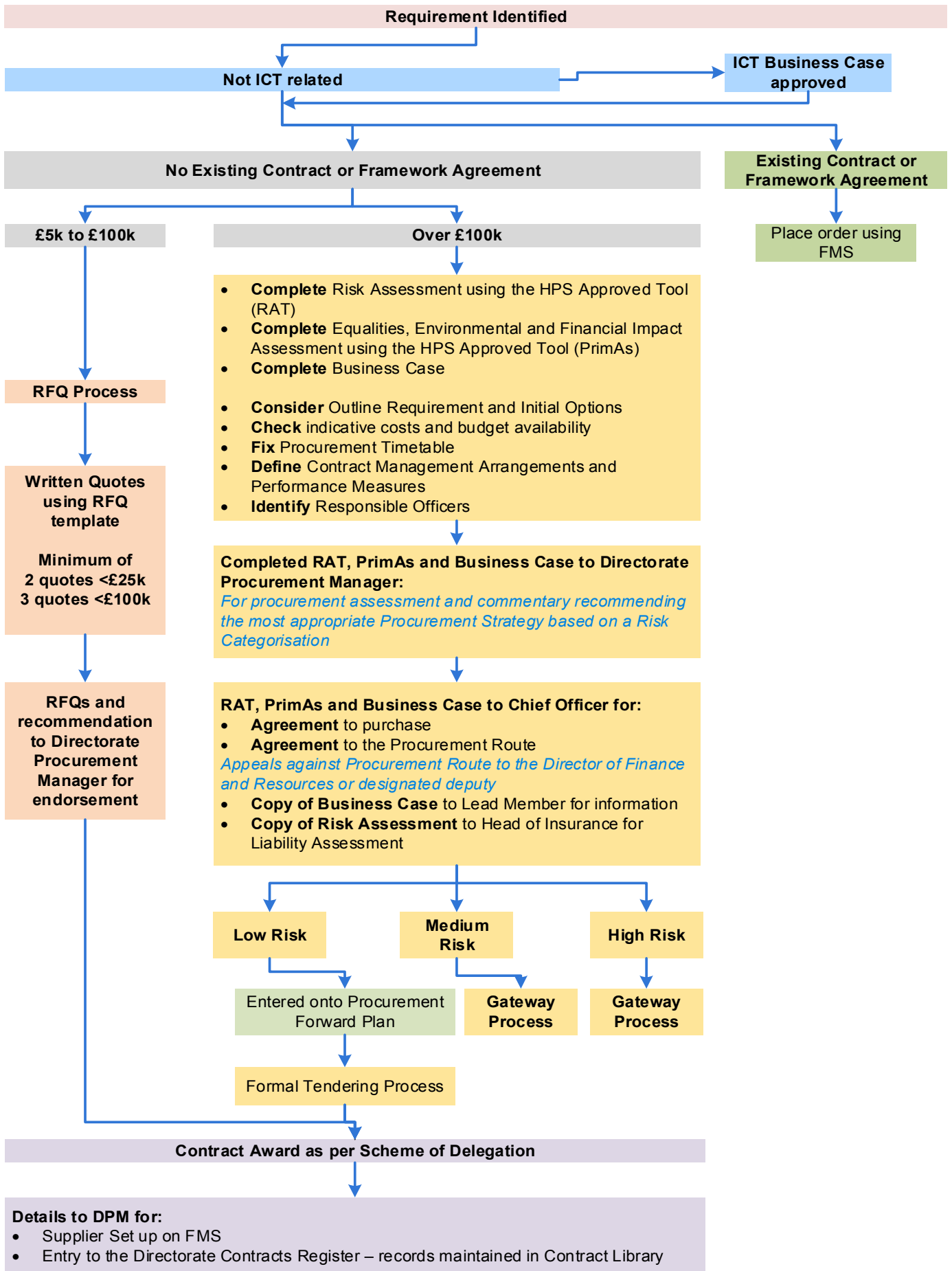
### **2.3 De Minimis Procurement**

2.3.1 De Minimis Procurements or “Contracts on a price” are instances where there is no, or limited, requirement for competition. Contracts with an estimated value of up to £5,000 do not require competition although an oral quotation should always be sought and all transactions must be fully recorded.

### **2.4 Contracts with a value greater than £5,000**

2.4.1 Contracts with a value greater than £5,000 will follow the Hackney Procurement Framework. The number of quotes required for contracts of different financial levels is set out in the chart below.

# Hackney Procurement Framework



## 2.5 Contracts with a value greater than £100,000

2.5.1 All proposed procurements with a value in excess of £100,000 must follow the “over £100K” flow on chart above. The Service Manager must complete a procurement impact assessment (PRIMAS) and a risk assessment utilising the Risk Assessment Tool (RAT). Where the value in excess of £100,000 a Business Case must also be completed.

2.5.2 The completed RAT and PRIMAS and if the procurement is over £100K, Business Case, must be forwarded by the Service Manager to the Directorate Procurement Manager who will advise on the proposals and will confirm the risk rating of the RAT. For procurements over £100K the DPM will also provide comments on the business case. The RAT and PRIMUS and where required the Business Case shall then be submitted for approval by the Chief Officer. The DPM’s commentary will provide any relevant procurement comments that the Chief Officer needs to be aware of and will include a professional view on the risk categorisation. This will therefore determine the Procurement Strategy to be adopted.

2.5.3 The Risk Assessment will categorise each procurement activity as:

Low Risk	<p>Procurement to be managed by the Service Manager and the DPM and must consist of the following components.</p> <ul style="list-style-type: none"> <li>➤ Entry onto the Procurement Forward Plan where the contract is to be awarded by HPB or CPC.</li> <li>➤ Specification</li> <li>➤ Simple Invitation to Tender (ITT) document</li> <li>➤ Minimum of three (3) external tenderers (CSO 3.1 refers to advertising requirements)</li> <li>➤ Evaluation and Award Criteria</li> <li>➤ Contract Management Arrangements</li> <li>➤ Recording of the contract on the Departmental Register</li> </ul> <p>The Service Manager must complete the required template report to seek authority to award the contract. This report is approved the Chief Officer or Deputy but cannot be further delegated.</p> <p>If the value of the Contract is above the delegated authority of the Chief Officer within the Scheme of delegation then the report is approved by the Chair of Hackney Procurement Board if less than £2m, or by Cabinet Procurement Committee if more than this value.</p>
Medium Risk	Procurement to follow the Gateway Process through the Hackney Procurement Board
High Risk	Procurement to follow the Gateway Process through the Cabinet Procurement Committee.

2.5.4 Where the Chief Officer does not agree with the procurement strategy being recommended by the Directorate Procurement Manager, the Chief Officers should present a written appeal to the Director of Finance and Resources or a designated deputy.

## **2.6 For Contracts where there are less than the required minimum Tenderers**

2.6.1 In cases where the Contracting Officer wishes to proceed with a competitive Tender, but to invite less than the minimum number of Tenderers set out in Standing Orders 2.4.1 and 2.5.3, the Chief Officer and the Contracting Officer must obtain the agreement of the Director of Finance and Resources or designated deputy, and certify the reason why and sign and date the certification in the Departmental Register.

## **2.7 Gateway Procurement Process**

2.7.1 Contracts with a risk assessment of Low (if to be awarded at HPB or CPC), Medium or High shall be entered onto the Procurement Forward Plan.

2.7.2 Cabinet Procurement Committee will review the progress of all contracting activities on the Forward Procurement Plan.

2.7.3 A procurement activity shall be placed onto the Procurement Forward Plan once the proposal has been agreed by the Chief Officer or their Deputy (which cannot be further delegated) and the risk based procurement route endorsed by the DPM.

2.7.4 Business Cases that relate to the procurement of ICT related goods and services must be agreed and finally approved by Core ICT before acceptance onto Procurement Forward Plan. Early consultation with ICT is required to ensure that any procured ICT products are as compatible as possible with the existing ICT systems to ensure integration costs are kept to a minimum.

2.7.5 Business Cases that relate to the procurement of vehicles must be approved by the Fleet Management Unit before acceptance onto Procurement Forward Plan.

2.7.6 All procurements with a risk assessment of "High Risk" will be managed by the Cabinet Procurement Committee.

2.7.7 All procurements with a risk assessment of "Medium Risk" will be managed by the Hackney Procurement Board.

2.7.8 Under no circumstances is a procurement to be de-classified from High Risk to Medium Risk or lower or removed from the Gateway Programme without the consent of the relevant approving body.

2.7.9 For High Risk procurement the approval to progress to market or award a contract following Gateway Reviews at Business Case and Contract Award will be with Cabinet Procurement Committee. Nevertheless, the Chair of Cabinet Procurement Committee has discretion to refer any Gateway Business Case or Contract Award review for decision by Cabinet if she or he deems it appropriate. This discretion will normally be exercised when the item is placed on the Procurement Forward Plan.

2.7.10 For Medium Risk procurements, the approval of Gateway Review Business Case will rest with the Chair of Hackney Procurement Board. The approval of to award a contract following Gateway Contract Award will rest with the Chair

of Hackney Procurement Board up to a maximum contract value of £2m. Above this value the Contract Award will be referred to Cabinet Procurement Committee for award. The Chair of Hackney Procurement Board has discretion to refer any Gateway Business Case or Contract Award for decision by Cabinet Procurement Committee if she or he deems it appropriate. This discretion will normally be exercised when the items is placed on the Procurement Forward Plan.

## **2.8 Review Point 2 – Business case**

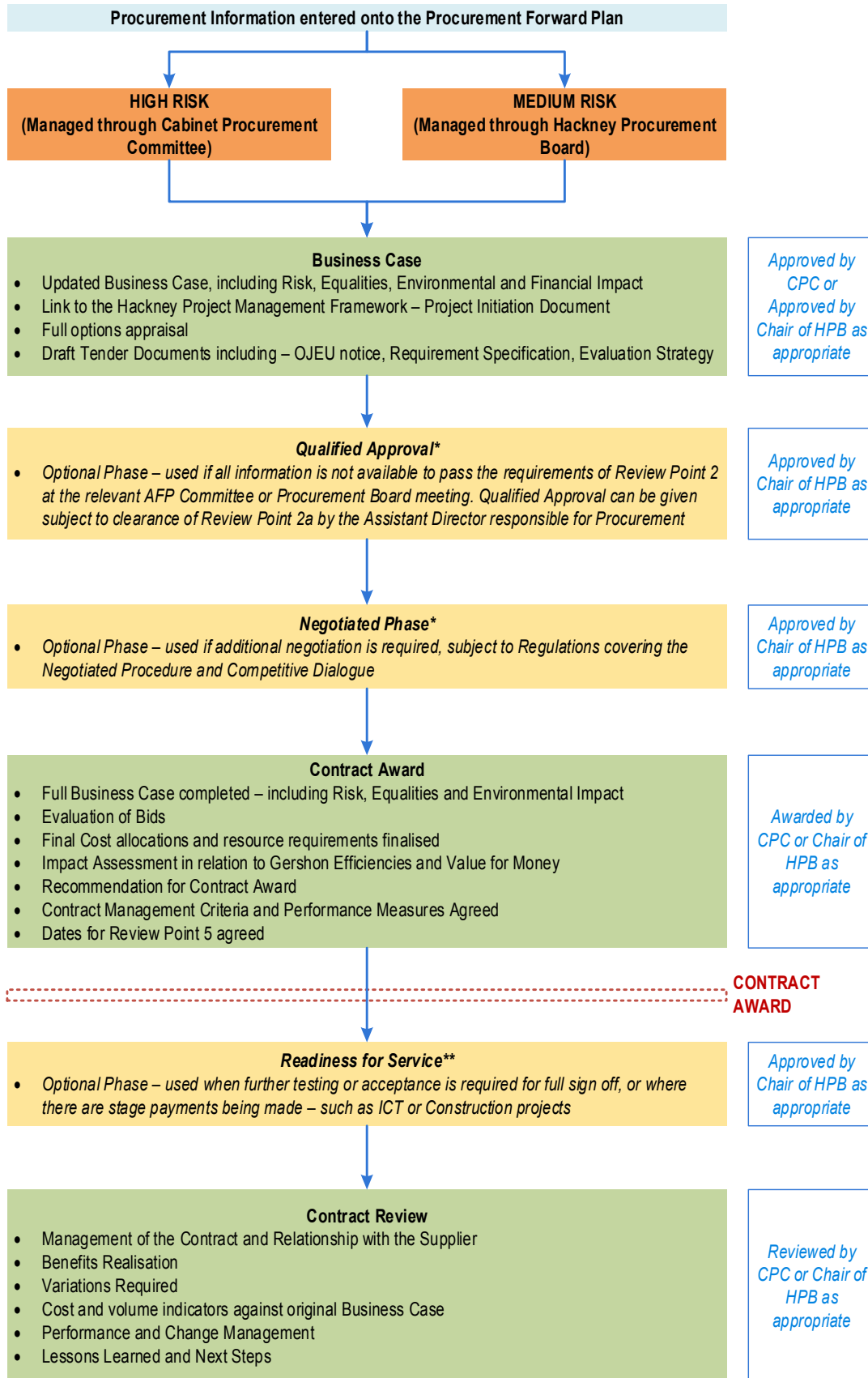
2.8.1 Service/Project Managers are required to complete a Review Point 2 Procurement Board paper, known as a Business Case paper. If time scales permit, this can be considered at the next available Procurement Board Meeting but if this is impractical due to time constraints, the paper can be submitted to the Director of Finance and Resources or nominated deputy for approval and then subsequently submitted to next available Procurement Board or Cabinet Procurement Committee (as appropriate) as an Information paper.

## **2.9 Review Point 4 – Contract Award**

2.9.1 Following an appropriate competitive process, under the direct supervision of the relevant Directorate Procurement Manager, a Review Point 4 report paper, known as a Contract Award paper must be produced and submitted to the Chair of the Procurement Board and the Chief Executive for approval and Contract Award. This paper must then be reported for information to the next available Procurement Board or Cabinet Procurement Committee.

2.9.2 The flowchart below outlines the component parts of the Gateway Procurement Process.

# Hackney Gateway Procurement Process



\* To be decided at Business

\*\* Not always required – to be decided at entry unto the Forward Plan



### **3 Procedural Requirements**

#### **3.1 Advertising your requirements**

3.1.1 For contracts below £100,000 the Council must take all reasonable steps to obtain Best Value in selecting its bidders from which competitive quotations are sought. This must be done always having reference to the requirements of Contract Standing Order 1.2 although advertising is not mandatory for such value contracts. Where the estimated value of the contract exceeds £100,000 subject to Standing Order 5 on the use of Framework Agreements and Approved Lists, the following methods must be used to identify potential suppliers. Notwithstanding this, if the Council identifies a requirement to advertise for any contracts with a value above £25,000 (net of VAT) then this opportunity must be advertised on Contracts Finder.

a) If the value is £100,000 to the relevant EU threshold, subject to 3.1.2 below – an invitation to tender shall be sent to at least four suitable persons or organisations, unless there is only one supplier, following advertisements in appropriate publications, the Council's website and Contracts Finder.

b) If the value is at the EU threshold or above, officers must apply the competitive process in accordance with the EU Procurement Directives. Current levels are given on the Procurement pages.

3.1.2 Specifically for works contracts with an estimated value between £100,000 and the EU threshold, officers may use, as approved by the Director of Finance and Resources, a nationally recognised pre-qualification system such as Constructionline, subject to current advice from the Hackney Procurement Centre. The use of Constructionline does not replace competitive tendering.

#### **3.2 Evaluation of Suppliers**

3.2.1 Officers shall apply criteria in addition to price when evaluating potential suppliers. All contracts awarded under the EU Procurement Directives, shall be awarded using the Most Economically Advantageous Tender approach.

3.2.2 Where the contract is risk assessed as either Medium or High Risk, a bidder's Financial viability shall be assessed in all instances prior to making an award of contract.

3.2.3 Where a contract is valued below the EU threshold for works, services and supplies, a single stage process shall be used without a pre-qualification questionnaire (PQQ) unless this is agreed by the Director of Finance or his designated deputy. Any above EU threshold procurements must use PQQs on the basis of Central Government Guidance in accordance with the relevant EU Procurement Regulations, as prescribed by the HPS.

Where a procurement activity is following the Gateway Procurement Process, sustainability policies must be assessed as part of the evaluation of the tender response.

- 3.2.4 If a tender is received with an abnormally low price in proportion to the tender requirements, the Council Officer leading the procurement shall require the tenderer to explain the price or costs proposed in the tender. If after consulting the tenderer the Officer is not satisfied that the evidence or explanation provided can satisfactorily account for the low price or costs proposed, the Officer should consult with the HPS in order to decide whether to reject the tender or not.

### **3.3 Late Tenders and Quotations**

- 3.3.1 The time limits for the receipt of tenders shall be fixed in accordance with Regulation 47 of the Public Contracts Regulations 2015.
- 3.3.2 Tenders or quotations which are received by the Council after the specified time and date will not be considered.

### **3.4 Tender Opening**

- 3.4.1 All tenders shall be returned to a deputy designated by the Director of Finance and Resources who shall be responsible for the safekeeping of tenders, including tenders received electronically until opening. All tenders, other than those received electronically, shall be opened by two Tender Opening Officers, at least one of whom shall be from the Directorate of Finance and Resources. Tenders received electronically may be opened by one Tender Opening Officer from the Directorate of Finance and Resources, or two where the tender relates to the Director of Finance and Resources, where one officer is not employed within the tender letting area.
- 3.4.2 The Director of Finance and Resources or designated deputy shall ensure that sufficient persons designated as Tender Opening Officers to enable at least two persons to open and record all Tenders received in connection with each Contract, who have had, or will have, no material involvement in the procurement.

### **3.5 'Request For Quotation' (RFQ) Process**

- 3.5.1 Chief Officers are responsible for ensuring that quotations are received, opened and stored in their Directorate.

### **3.6 Post Tender Appraisal to Award**

- 3.6.1 Providing clarification of an invitation to tender to bidders or seeking clarification of a tender is permitted subject to this Standing 3.6.1. Officers may clarify mistakes or errors in the tender submitted, or apparent inconsistencies in the tender documentation. Where there are post tender clarifications, all tenderers involved should be notified and all information documented by the Officers conducting the clarification.
- 3.6.2 Discussion with tenderers after submission of a tender and before the award of a contract with a view to obtaining variations to scope, price or specification is generally not permitted and is always subject to the EU Procurement Regulations.
- 3.6.3 Where post-tender clarification results in a significant material change to the

specification or scope of the procurement then the contract must not be awarded but re-tendered.

### **3.7 Contract Award**

- 3.7.1 Contracts will only be awarded in accordance with these Contract Standing Orders and the Schemes of Delegation.
- 3.7.2 Contracts subject to the full EC procurement rules must be awarded in accordance with the "Mandatory Standstill Period". There must be a minimum of 10 calendar days between the despatch of the notification of the award decision and contract conclusion ('Day 1' is the day after the award decision is issued by fax or email and in writing to all tenderers. If the standstill period ends on a UK non-working day, it must be extended to the end of the next working day). The standstill period need not apply following application of the urgency provision under the negotiated procedure where single tendering takes place.
- 3.7.3 All contracts awarded by Cabinet Procurement Committee may be subject to the Council's "Call in" procedure. Subject to Standing Order 3.7.2, contracts can be awarded 5 days after the publication of the decision unless it is "Called in" by Members.

### **3.8 Signing and Sealing Of Contracts**

- 3.8.1 All contracts whatever the value will be in writing and entered into at the appropriate level set out below taking account of value in accordance with these Contract Standing Orders and the Schemes of Delegation.
- 3.8.2 Contracts shall be awarded on the terms and conditions as approved by the Director of Finance and Resources, or designated deputy, and the Corporate Director of Legal, HR and Regulatory Services and may be signed on behalf of the Council "under hand" by the Chief Officer or an officer delegated by the Chief Officer to sign or the Corporate Director of Legal, HR and Regulatory Services or designated deputy.
- 3.8.3 Subject to 3.8.4 below, contracts valued at less than £100,000 may be entered into "under hand" by Council Officers in accordance with the financial thresholds set out in the Schemes of Delegation.
- 3.8.4 For Low and Medium Risk contracts valued at £100,000 or more and all High Risk contracts, and Civic Agreements or where there is no price or other tangible consideration or as may be recognised in Law, the Corporate Director of Legal, HR and Regulatory Services or designated deputy will affix the Council's seal in order to execute such contracts as deeds unless authority is given by the said officer whether generally or specifically that a contract can be entered into "under hand" by the Chief Officer without affixing the seal.

3.8.5 No works or delivery of supplies or services of any value, or payment for those shall be allowed prior to the relevant contracts having been awarded. The Corporate Director of Legal, HR and Regulatory Services may issue guidance generally or for specific procurements on committing to contractual arrangements through an initial exchange of correspondence subject to same as provided in Contract Standing Orders (above) to written contracts being formalised and entered into as quickly as possible.

### **3.9 Archiving of Data**

3.9.1 Contract documentation shall be retained by the relevant Chief Officer as well as details of the decision making process for all contracts including documented evidence of the justification for award of contract, the evaluation criteria used, and the results of applying these criteria.

3.9.2 Contract documents shall be retained for twelve years after the period of obligation if the Contract was awarded under seal and for six years if it was awarded under hand. Contract final accounts shall also be retained for twelve years. Quotations and unsuccessful tenders shall be retained for two years.

3.9.3 The Contracts Registers (see 3.10 below) shall be permanently retained.

3.9.4 The Chief Officer shall make an electronic copy of every signed or sealed contract over £100,000 in Portable Document Format (PDF) and shall send this to the Director of Finance and Resources ([contract.library@hackney.gov.uk](mailto:contract.library@hackney.gov.uk)) within 10 working days of signing or sealing.

3.9.5 The Legal Services Division shall also make an electronic copy of all sealed contracts in Portable Document Format (pdf). It shall be retained on the Legal Services document management system.

### **3.10 Contracts Register**

3.10.1 For all contracts with a value in excess of £100,000, the Director of Finance and Resources shall retain details in a Corporate Contracts Register, Chief Officers shall provide information in the format requested by the Director of Finance and Resources, within one calendar month of the award of contract.

3.10.2 In accordance with the Local Government Transparency Code 2015, once a contract over £5,000 in value has been awarded, the HPS must be notified of the following information so that the Contract Register can be updated and details of the contract published:

- (a) Contract title;
- (b) Supplier name, details of company and, where relevant, registered company number;
- (c) Contract term including details of start and end date;
- (d) Whether or not the contract was the result of an invitation to quote or a published invitation to tender;
- (e) Estimated total contract value;
- (f) Description of goods and/or services being provided;
- (g) Name of Contract Manager;
- (h) Department responsible for contract; and

(i) Any VAT that cannot be recovered

3.10.3 In addition, the following records should be available:

- a) Details of any pre-qualification process and the results.
- b) How suppliers were selected for a bidding list;
- c) Business case for single tender action
- d) Copies of tenders;
- e) Notes of the evaluation process, award procedure and any post tender negotiations; and
- f) Copies of final orders or Contracts.

3.10.4 Where appropriate, the Contract Manager will maintain records to show:

- a) Maintenance of bonds and appropriate insurances;
- b) Any variations;
- c) Disputes and their outcomes;
- d) Stage payments;
- e) Acceptance of deliveries;
- f) Copies of guarantee, warranties etc and other appropriate records; and
- g) Supplier performance.

#### **4 Variations Including Contract Extensions**

4.1 Chief officers are responsible for ensuring that sound financial controls are applied to all procurements and shall take steps through robust project planning and Contract management arrangements to ensure that the number of variations to requirements is minimised.

4.2 Contract Managers or Contracting Officers may authorise the following variations, providing that they are satisfied that the change is in the best interests of the Council and there is an approved budget available, unless this authority is expressly excluded in writing by the Chief Officer for the Contract:-

- a negotiated variation provided for within the terms or conditions of the Contract; or
- minor operational changes to the Specification or delivery of the Contract that have minimal, or no effect, on the overall costs of the Contract. [i.e. are always less than 20% of the total contract value or £25,000 (whichever is the lesser).

and in each case the terms and conditions remain unchanged and this does not infringe EU Procurement rules.

4.3 Where the contract does not permit the extension or variation contemplated and the variation is greater than 20% of the total contract value subject to Contract Standing Orders 4.4 and 4.5 below, the Chief Officer may authorise an extension or other variation after written consultation with the Director of Finance and Resources and the Corporate Director of Legal, HR and Regulatory Services or their designated deputies.

4.4 Where a variation is approved and has one or more of the following effects,

or where the combined effect of a number of approved variations to a contract has one or more of the following effects, for Medium or High Risk contracts the Chief Officer will ensure that a written report setting out the variation/s with justification is presented to the next Hackney Procurement Board or Cabinet Procurement Committee as appropriate:

- i) Adds more than 20% to the original total value of the contract as at the time of the extension;
- ii) The works, goods or services to be added or deleted from the contract result in the contract being substantially different in scope and activity.

Subject always to:

- a) the Chief Officer having the budget provision to allow an extension and;
- b) unless the proposed variation extends the time period or varies the scope or value of a contract so that the total value of the contract breaches or may breach EU procurement thresholds or regulations, in which case the Chief Officer shall obtain authorisation from the Corporate Director of Legal, HR and Regulatory Services to proceed with the variation.

4.5 If the variation is authorised by the Corporate Director of Legal, HR and Regulatory Services, the Chief Officer will ensure that a written report setting out the variation/s with risks and justification is presented to the next Cabinet Procurement Committee. If variations are not authorised the Chief Officer shall follow the recommendation/s made.

4.6 All variations shall be in writing and priced and where orally given originally shall be confirmed in writing at the earliest opportunity. All variations shall be appended to the contract whenever possible.

## **5 Framework Agreements and Approved Lists**

### **5.1 Framework Agreements**

5.1.1 Framework Agreements shall be set up in accordance with the Contract procedures appropriate to the risk assessment, as set out in these Standing Orders, but in all cases will be at least Low Risk. Chief Officers must ensure that where a Framework Agreement is to be set up within their Directorate, the Director of Finance and Resources, or their designated deputy, is notified at the earliest opportunity and is recorded on the Procurement Forward Plan as a Framework Agreement.

5.1.2 Where a Framework Agreement has been established by the Council for the supply of goods, works or services, Officers shall only procure those goods, works or services regardless of value, through this Agreement. Such procurements shall be carried out in accordance with these regulations having regard to the Directorate's Procurement Plan and to the need to achieve value for money.

5.1.3 A register of approved Framework Agreements shall be maintained by the Director of Finance and Resources, or their designated deputy. This register will be updated regularly and reissued at least annually.

- 5.1.4 Officers may use Framework Agreements set up by other Central or Local Government organisations as instructed by the Director of Finance and Resources, or designated deputy.
- 5.1.5 Officers must ensure that orders under Framework Agreements are placed using procedures set out in the relevant agreement documents.
- 5.1.6 The maximum duration of a Framework Agreement, including any provision for extension shall be four years.

## **5.2 Approved Lists**

- 5.2.1 A Chief Officer may decide whether or not to keep Approved Lists of suppliers willing and able to supply products or services of any particular type or description. Where a decision is taken to keep such an Approved List, this shall be established and maintained in accordance with Sections 17 to 22 of the Local Government Act 1988.
- 5.2.2 Permission must be sought from the Director of Finance and Resources, or designated deputy, justifying why an Approved List is required as opposed to a framework agreement.
- 5.2.3 Chief Officers must adhere to Standing Orders in the creation and use of Approved Lists, including us of the Council's pre-qualification procedures.
- 5.2.4 Approved Lists cannot solely be used for the exclusive selection of Tenderers for any Contract above the value thresholds set out in European Procurement Directives.
- 5.2.5 A review of an Approved List shall be carried out by the Chief Officer every two years with the Director of Finance and Resources, or designated deputy.
- 5.2.6 A Framework or "call off" contract will not be considered an Approved List.
- 5.2.7 A Chief Officer may use a nationally recognised Approved List such as Constructionline subject to any guidance issued under these Standing Orders, or by the Government or the HPS.

## **6 Exemptions**

- 6.1 Exemptions from these Standing Orders shall only be awarded in exceptional circumstances and no exemption shall be awarded that would contravene EU Procurement Directives or any other legislation.
- 6.2 In no circumstances shall a Chief Officer requesting an exemption from these Standing Orders have the authority to award that exemption.

## **6.3 High and Medium Risk Procurements**

- 6.3.1 Where a procurement has been risk assessed and the outcome of that assessment endorsed by the DPM as a Medium or High Risk Procurement, an exemption from these Standing Orders shall not be applied without prior endorsement by Cabinet Procurement Committee and authorisation from the Mayor and Cabinet. The request for exemption, the reasons for it, the estimated value of the contract and the potential risks shall be set out in writing for the Mayor and Cabinet to consider.
- 6.3.2 In a situation of genuine emergency, where the Chief Officer has robust evidence that the proposed exemption cannot wait until the next meeting of the Mayor and Cabinet, the Chief Executive alone has delegated authority to award an emergency exemption.
- 6.3.3 An emergency may include situations where e.g. delivery of a significant service to the public is threatened in the short-term, where the Council is required to do something immediately by the Courts or where there is significant risk to personal safety or the protection of property. Applications for emergency exemption will however be considered on their individual merits but should only be made in exceptional circumstances.
- 6.3.4 Where an emergency exemption is awarded, the Chief Officer shall ensure that the request for exemption, the justification for it and the decision is reported to the next meeting of Cabinet Procurement Committee.

#### **6.4 Low Risk Procedure**

- 6.4.1 Where a procurement has been risk assessed and the outcome of that assessment endorsed by the DPM as Low Risk and where a Chief Officer has robust evidence that the application of the Standing Orders would not offer the Council an improved balance of quality and price or where they have tried and failed to award the contract by applying the Standing Orders, an exemption may be agreed in advance in writing, with the Director of Finance and Resources or designated deputy; or where a breach of 6.2 above might result, the Corporate Director of Legal, HR and Regulatory Services.

#### **6.5 Procurements for Personal Social Care**

- 6.5.1 The Corporate Director of Health and Community Services or Children and Young People's Services or other Director having responsibility for the provision of personal social care services to adults or children ("the Director") shall not be required to competitively tender contracts for social care where the purchase is required in order that the Council may meet its statutory obligations and the application of the Hackney Procurement Framework contained within these Standing Orders would prevent the discharge of those statutory obligations.
- 6.5.2 The Director shall nevertheless make arrangements to ensure that evidence exists to show that all such purchases are systematically reviewed to ensure that they appropriately meet the needs of the user and that they provide value for money in relation to national and local cost indicators.
- 6.5.3 This exemption shall not apply to block, framework or term contracts for social care or to contracts for other types of goods, services or works; these shall be let in accordance with the general provisions of these Standing Orders. The Director shall also take all reasonable steps to ensure that the



use of collaborative procurement arrangements and the use of block, framework and term contracts for social care are maximised.