

### 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 European Union (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 "Brexit": The EU Public Procurement Directives are enacted in domestic legislation, for example The Public Contracts Regulations 2015 and The Concession Contracts Regulations 2016. This legislation will remain in force irrespective of the shape of the United Kingdom's terms of exit from the European Union unless amended or repealed by new domestic legislation, at which point these Contract Standing Orders will be updated accordingly.

1.1.3 All procurement activity must be carried out not only in accordance with these Standing Orders but also in compliance with the Council's Constitution including the General Scheme of Delegation to Officers, Best Practice Guides and other relevant guidance as published by the Group Director, Finance and Corporate Resources, or designated deputy.

1.1.4 The Group Director, Finance and Corporate 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 1.1.6.

1.1.5 Group Directors 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.

1.1.6 It is the responsibility of all Officers to report any breach of Contract Standing Orders of which they become aware to their Director and the Director, Legal as Monitoring Officer. The Director is required to report any breach to the Director of Legal and to the Group Director, Finance and

Corporate 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 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 and 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 and 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 Director of Legal 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 and entered onto the Gifts and Hospitality Register. Guidance can be found within the Council's Code of Conduct and Officers' Code of Conduct and on the Council intranet.

## **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 Group Director, Finance and Corporate Resources and the Director of Legal.

## **1.4 Partnering Agreements and Partnering Arrangements**

- 1.4.1 The Contracting Officer must seek advice from the appropriate Category Lead 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 unless this has been considered in writing as set out in Standing Order 1.4.5 below. This is to say the Council's default position is that there is no intention to create a new partnership entity from any arrangement or to incur

joint liability for its debts and obligations.

- 1.4.3 For any Partnering Arrangement where the Council is the accountable body for expenditure, the Council's Contract Standing Orders normally apply. Any exception or class of exception to this principle must be agreed by Cabinet or Cabinet Procurement Committee. Where the Council is not the accountable body, to ensure proper use of funds paid from the Council officers must be satisfied that the procurement framework of the partnership is broadly comparable to the Council's. The proposed arrangements must be agreed with the Group Director, Finance and Corporate Resources or designated deputy.
- 1.4.4 Where the Council proposes to enter into a Partnering Agreement with a Contractor, the Gateway Process shall be applied to the selection process.
- 1.4.5 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 Director, Legal and the Group Director, Finance and Corporate 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.

## **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.

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.

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. The Council will also always have regard to payment of the London Living Wage for contractors' staff engaged on its contracts for services or works.

there is provision for the recovery of sums due to the Council.

the Contractor's rights to assign and sub-contract are properly controlled e.g. If it is permissible in our contract with Entity A for Entity B or C to do all or some of the work and if so, what authorisation must first be sought from the Council by Entity A for this to happen.

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.

the Council is not committed to accept the lowest, or any, tender.

Insurance & Indemnity incl. professional indemnity where applicable. (This should be discussed on an individual basis 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).

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 Category Lead or the Director, Legal must be sought:

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

1.5.2 The Director of Legal, after consultation with the Group Director, Finance and Corporate 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 Group Director, Finance and Corporate 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 Category Lead.
- 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 Category Lead.
- 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 Category Lead.
- 1.8.2 Where a Contract is expected to exceed £1,000,000 then the Contracting Officer shall consult with the Group Director, Finance and Corporate 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 Where an electronic auction is permitted, activities for post tender assessment shall be carried out prior to the closing of the auction i.e. the evaluation of "quality" must have been concluded on pass or fail basis for every bidder prior to closing prices being submitted in an electronic auction. All closing prices for remaining bidders will therefore be equally capable of acceptance and contract award will be on the basis of lowest price alone.
- 1.9.3 A retrospective Contract Award report must be submitted to the next available Cabinet Procurement Committee or Hackney Procurement Board, depending on the applicable contracting process.

## **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 Group Director, Finance and Corporate 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 Where a project is to be funded as a grant from the Council, 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.
- 1.10.4 Where the Council proposes to undertake procurement following receipt of a grant or as part of Pooled Funding Arrangements these Contract Standing Orders apply unless superseded by the specific conditions of that grant, in which case such conditions take precedent.
- 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 contract 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 Category Lead. 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 Category Lead 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 Group Director, Finance and Corporate Resources, or designated deputy, and the Director, Legal, 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 Group Director, Finance and Corporate Resources, Directors 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 Group Director, Finance and Corporate Resources 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 Group



Director, Finance and Corporate Resources 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 Group Director, Finance and Corporate Resources 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 Group Director, Finance and Corporate 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 Group Director, Finance and Corporate Resources.

#### **1.14 Responsibilities**

1.14.1 The Chief Executive, Group Directors, 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 Director 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 Director and the Contracting Officer for the same contract. Any suitable officer may be the Contracting Officer providing that it has been delegated to them within the duties of their Job Description or in writing by the Director.

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 Director, the Director having first considered the desirability of any separation of duties.

#### **1.15 Duties**

1.15.1 The duties that fall under the responsibility of a Group Director, Director, Contracting Officer, Contract Manager and other officers with defined responsibilities are set out under these Contract Standing Orders and the Council’s Constitution.

#### **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 Group Director, Finance and Corporate

Resources or designated deputy, or other Group Director having responsibility for Corporate Fleet Management, or nominated deputy.

## **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 justifiably 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 Contracting Officer can demonstrate to the Group Director, Finance and Corporate 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 Director, including comments from the Category Lead and, subject to acceptance of the case, retain a copy of the written agreement with the contract documents. The Director 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 Director will submit a list of all single tenders authorised by them, showing contract value, contract description, contractor and duration, to their Group Director, and each Group Director shall on a quarterly basis submit a single list for their department to the Group Director Finance and Corporate Resources or nominated deputy. These decisions shall be regularly reported to Cabinet by the Group Director, Finance and Corporate 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 Director and the Contracting Officer must submit a written case to the Group Director, Finance and Corporate Resources, or designated deputy, and, subject to acceptance of the case, retain a copy of the written agreement with the contract documents. The Group Director, Finance and Corporate 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 Group Director, Finance and Corporate Resources in the Overall Financial Position Report.

2.2.4 In all such cases above the Contract Officer must;

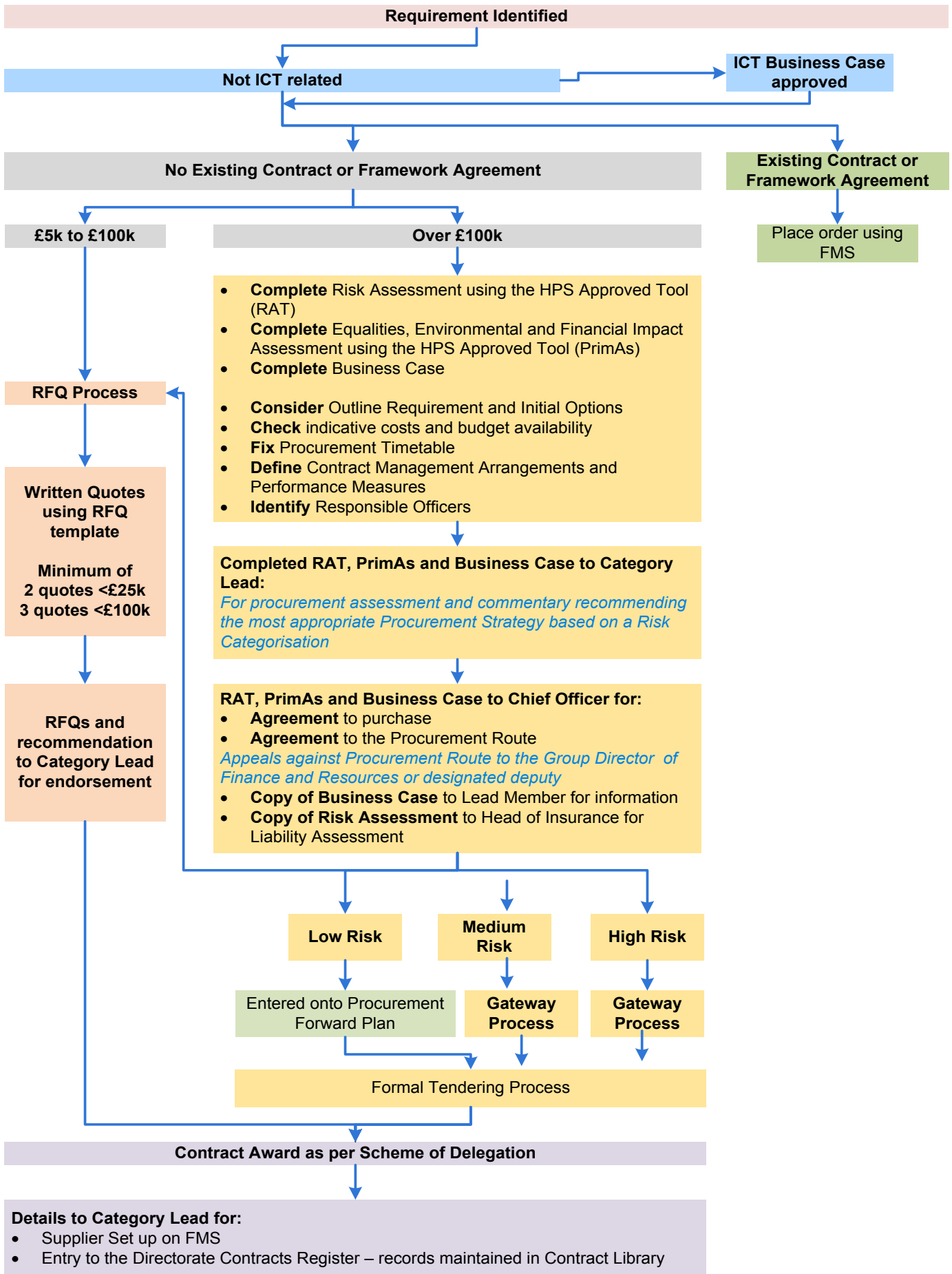
- a) Specify the Product in writing;
- b) Where only one Tenderer is identified, to ensure the best price and conditions are negotiated and that these are recorded;
- c) Ensure that provisions for the adjustment in price, volumes or other variable factors have been agreed and recorded in writing;
- d) 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 must 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.



## 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 Contracting Officer must complete a procurement impact assessment (PRIMAS) and a risk assessment utilising the Risk Assessment Tool (RAT). Where the value is more than £100,000 a written Business Case must also be completed.

2.5.2 The completed RAT and PRIMAS and Business Case, must be forwarded by the Contracting Officer to the Category Lead who will advise on the proposals and will confirm the risk rating of the RAT. For procurements over £100K the Category Lead will also provide comments on the business case. The RAT and PRIMAS and the Business Case shall then be submitted for approval by the Director. The Category Lead’s commentary will provide any relevant procurement comments that the Director 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 Contracting Officer and the Category Lead 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 Contracting Officer must complete the required template report to seek authority to award the contract. This report is approved by the Group Director or Director but cannot be further delegated in line with the financial Scheme of Delegation approval levels.</p> <p>If the value of the Contract is above the delegated authority of the Group Director 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 Director does not agree with the procurement strategy being recommended by the Category Lead, the Director should present a written appeal to the Group Director, Finance and Corporate Resources or a designated deputy.

## **2.6 For Contracts where there are less than the required minimum invitations to Quote or Tenderer**

2.6.1 In cases where the Contracting Officer wishes to proceed with competitive Quotation or Tender, but to invite less than the minimum number set out in Standing Orders 2.4.1 and 2.5.3, the Director and the Contracting Officer must certify the reason why and obtain the written agreement of the Group Director, Finance and Corporate Resources or designated deputy, this correspondence to be retained with the procurement records for the contract.

## **2.7 Gateway Procurement Framework**

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

2.7.2 A procurement activity shall be placed onto the Procurement Forward Plan once the proposal has been agreed by the Director and the risk based procurement route endorsed by the Category Lead.

2.7.3 The procurement of ICT related goods and services (including procurements which have implications for the Council's information assets) must be agreed and approved by the Director of ICT, or designated deputy, before acceptance onto the Procurement Forward Plan. Early consultation with ICT is advised to avoid any delay to the delivery of projects.

2.7.4 Business Cases that relate to the procurement of vehicles must be approved by the Corporate Fleet Manager before acceptance onto Procurement Forward Plan.

2.7.5 Cabinet Procurement Committee and Hackney Management Team will review the progress of all contracting activities on the Procurement Forward Plan.

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

2.7.7 All procurements with a risk assessment of "Medium Risk" will be overseen by the Hackney Procurement Board at the Business Case stage and at Contract Award up to a value of £2m. Cabinet Procurement Committee will determine the award of contracts above £2m.

2.7.8 A Group Director, having considered the Procurement Forward Plan may require that authority generally delegated to a Director in their department is instead reserved to them in respect of a particular procurement or specified class or group of procurements. This discretion will normally be exercised when an item is placed on the Procurement Forward Plan and will be given in writing to the relevant Director.

2.7.9 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.

- 2.7.10 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.
- 2.7.11 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.

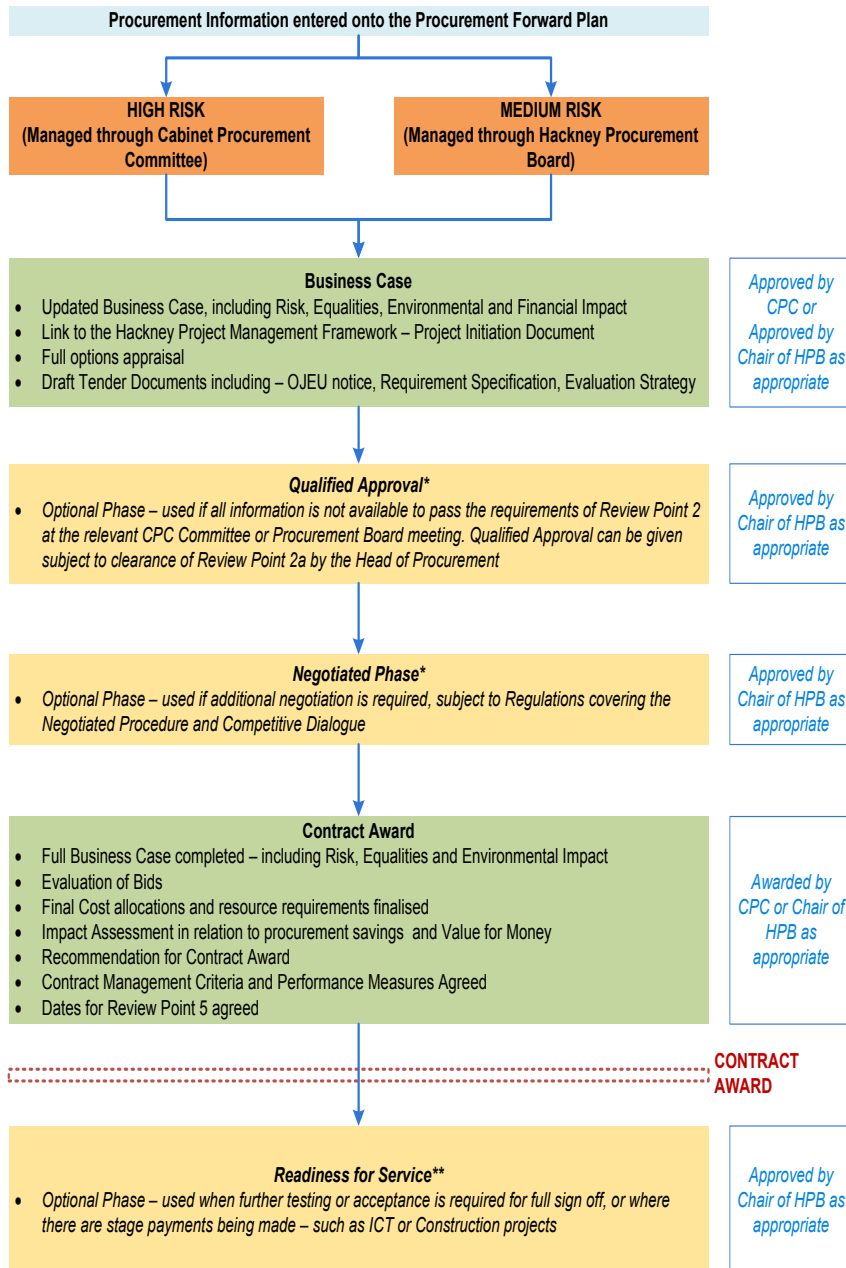
## **2.8 Review Point 2 – Business case**

- 2.8.1 Contracting Officers are required to complete a Business Case paper. For Low Risk Procurements this will normally be considered by the Director. For Medium Risk procurements, if time scales permit, this will be considered at the next available Hackney Procurement Board Meeting but if this is impractical due to time constraints, the paper can be submitted to the Group Director, Finance and Corporate Resources or nominated deputy for approval and then subsequently submitted to the next available Hackney Procurement Board or for High Risk Procurements the next available Cabinet Procurement Committee (as appropriate) as an Information paper.

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

- 2.9.1 Following an appropriate competitive process, with oversight by the relevant Category Lead, a Contract Award paper must be produced and submitted to the Director, Group Director, Hackney Procurement Board or Cabinet Procurement Committee (as relevant).
- 2.9.2 *The flowchart below outlines the component parts of the Gateway Procurement Process which applies to all Medium and High Risk procurement within the Hackney Procurement Framework.*

## Hackney Gateway Procurement Process



\* To be decided at Business Case

\*\* Not always required – to be decided at entry onto 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 between £100,000 and 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 on the Council intranet.

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 Group Director, Finance and Corporate Resources, a nationally recognised pre-qualification system such as Constructionline, subject to current advice from the Category Lead. 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. This must be a pass or fail test and should be assessed in relation to the likely severity of the consequences of a contractor's financial failure during the contract term. Lower value and shorter term contracts and contracts with multiple suppliers will carry lower risk. External credit reports can be taken into account but must not be relied upon in isolation. A supplier should ordinarily be required to satisfy certain financial metrics or ratios (e.g. annual turnover or the Acid Test Ratio). These metrics ratios must be published as part of the selection criteria. The assessment of financial viability must never be used to arbitrarily restrict a potential field of bidders. The impact on SMEs and start-up businesses may in particular be disproportionate. A bidder should always be given the opportunity to comment on a negative assessment of their financial viability and their comments should be taken into account when reaching an award decision.

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 Group Director, Finance and Corporate Resources 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 Category Lead.

3.2.4 Where a procurement activity is following the Gateway Procurement Process, sustainability policies must be assessed in accordance with statutory requirements and Council policy as part of the evaluation of the tender response.

3.2.5 If a tender is received with an abnormally low price in proportion to the tender requirements, the Council Officer leading the procurement in consultation with the Category Lead 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 in liaison with the Category Lead will 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 Group Director, Finance and Corporate 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 Corporate Resources. Tenders received electronically may be opened by one Tender Opening Officer from the Directorate of Finance and Corporate Resources, or two where the tender relates to the Directorate of Finance and Corporate Resources, where one officer is not employed within the tender letting area.

3.4.2 The Group Director, Finance and Corporate 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 Directors are responsible for ensuring that quotations are received, opened and stored in their service area so that they are available for future reference, and Group Directors must be satisfied that their Directors have made satisfactory arrangements to discharge this responsibility.

### **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 EU 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 Group Director, Finance and Corporate Resources, or designated deputy, and the Director, Legal and may be signed on behalf of the Council “under hand” by the relevant Director or Group Director or the Director, Legal or designated deputy.

3.8.3 Subject to 3.8.4 below, contracts valued at less than £500,000 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 £500,000 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 Director of Legal 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. In cases of unavoidable urgency the Director of Legal 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 Director 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. Group Directors must satisfy themselves that suitable arrangements are in place.
- 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 Contracting 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 Group Director, Finance and Corporate 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 In accordance with the Local Government Transparency Code 2015, once a contract over £5,000 in value has been awarded, the Central Procurement Team ([Procurement.Admin@Hackney.gov.uk](mailto:Procurement.Admin@Hackney.gov.uk)) must be notified of the following information by the Contracting Officer 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

3.10.2 In addition, the Contacting Officer must ensure the following records must 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.

3.10.3 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 Directors 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 Director responsible 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 individually or cumulatively always less than 20% of the original total contract value or £25,000, whichever is the lower value)

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 cumulative effect of the variation (and any previous variations) is within the authorisation limit of the Director under the Scheme of Delegation subject to Contract Standing Orders 4.6 to 4.8 below, the Director may authorise an extension or other variation after written consultation with the Group Director, Finance and Corporate Resources or their designated deputy.

4.4 Where the contract does not permit the extension or variation contemplated and the cumulative effect of the variation (and any previous variations) is within the authorisation limit of the Group Director under the Scheme of Delegation subject to Contract Standing Orders 4.6 to 4.8 below, the Group Director may authorise an extension or other variation after written consultation with the Group Director, Finance and Corporate Resources or their designated deputy.

4.5 Where the contract does not permit the extension or variation contemplated and the cumulative effect of the variation (and any previous variations) is above the authorisation limit of the Group Director under the Scheme of Delegation, subject to Contract Standing Orders 4.6 to 4.8 below, the Group Director may still authorise an extension or other variation after written consultation with the Group Director, Finance and Corporate Resources or their designated deputy, however the Group Director will also arrange for a written report setting out the variation/s with justification to be presented to the next available meeting of Hackney Procurement Board (if the latest contract value remains under £2m) or Cabinet Procurement Committee (if the latest contract value is now above £2m) for noting,:

4.6 Subject always to:

- a) The responsible Director or Group Director having the budget provision to allow an extension and;
- b) the proposed variation not extending the time period or varying the scope or value of a contract so that the proposed changes breach or may breach EU procurement thresholds or regulations, in which case the Director or Group Director shall obtain written authorisation from the Director, Legal to proceed with the variation.

4.7 If the proposed variation is authorised under 4.6 by the Director, Legal, the Director or Group Director may proceed. If the variation is not authorised the recommendation/s made shall be followed.

4.8 All variations shall be in writing and priced and where originally given orally, shall be confirmed in writing at the earliest opportunity. All variations shall be appended to the contract documents.

## **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. Directors must ensure that where it is intended that a Framework Agreement be set up within their service, the Group Director, Finance and

Corporate 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 unless the written consent of the Group Director, Finance and Corporate Resources, or their designated deputy. 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 Group Director, Finance and Corporate Resources, or their designated deputy. This register will be updated regularly and reissued at least annually.
- 5.1.4 Officers may also use Framework Agreements set up by other Central or Local Government organisations ("External Framework Agreements") as instructed or agreed by the Group Director, Finance and Corporate Resources, or designated deputy. For the avoidance of doubt, the first use of an External Framework Agreement is regarded as a procurement by these Standing Orders and the Hackney Procurement Framework applies in full except as set out in CSO 5.1.7 below. Subsequent use of an approved External Framework Agreement may be to the extent authorised. Intended use of an approved External Framework Agreement in excess of this authorisation must be subject to fresh consideration.
- 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.
- 5.1.7 Where it is proposed to use an External Framework Agreement for a project and prices and terms are certain at the point the Business Case is formulated because there is only one contractor (or exceptionally where is permissible under the framework to use a single contractor) within a relevant category, or where selection from contractors within a relevant category is solely based on the lowest price (i.e. the quality for all bidders within a category is equal and prices have already been obtained), a single stage combined Business Case and Contract Award report may be presented where otherwise two separate reports would be required.
- 5.1.8 G-Cloud (Digital Marketplace) is a set of specialist ICT frameworks let by Crown Commercial Services and comprise Infrastructure as a Service (IaaS), e.g. content delivery networks or hosting; Platform as a Service (PaaS), e.g. platforms that provide a basis for building other services and applications; Software as a Service (SaaS), e.g. accounting tools or customer service management software or Specialist Cloud Services (SCS), e.g. IT health checks or data migrations. G-Cloud is an External Framework and must be used in accordance with Standing Orders 2.7.3 and 5.1.4–5.1.7. Its procedures for use are however quite different from most other External Frameworks and users must give particular attention to following the

guidance provided at <https://www.gov.uk/guidance/g-cloud-buyers-guide>.

## **5.2 Approved Lists**

- 5.2.1 A Director 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 Group Director, Finance and Corporate Resources, or designated deputy, justifying why an Approved List is required as opposed to a framework agreement.
- 5.2.3 Directors must adhere to Standing Orders in the creation and use of Approved Lists, including use 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 Director every two years with the Group Director, Finance and Corporate Resources, or designated deputy.
- 5.2.6 A Framework or "call off" contract will not be considered an Approved List.
- 5.2.7 A Director 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 Category Lead.

## **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 Director or Group Director requesting an exemption from these Standing Orders have the authority to award that exemption.

### **6.3 Medium and High Risk Procurements – Contract Award**

- 6.3.1 Where a procurement has assessed as a Medium or High Risk Procurement, an exemption from these Standing Orders shall not be applied without prior endorsement by Cabinet Procurement Committee. 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 Group Director has robust evidence that the proposed exemption must be exceptionally applied, 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 be considered on their individual merits but should only be made in exceptional circumstances.

6.3.4 Where an emergency exemption is granted, the Group Director 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 – Contract Award**

6.4.1 Where a procurement has been risk assessed as Low Risk and where a Director has robust evidence that the application of these 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 these Standing Orders, an exemption may be agreed by the Group Director in writing, in consultation with the Group Director, Finance and Corporate Resources or designated deputy; and where a breach of 6.2 above might result, additionally the Director, Legal.

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

6.5.1 The Group Director, Children, Adults and Community Health 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 Group Director or 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 All personal social care contracts (including the provision of nursing care, residential care, supported living) shall be made in writing, or where this has not been possible due to urgency, confirmed in writing at the earliest opportunity and in any event within one calendar month of contract commencement. Any subsequent amendment of the contracted services shall similarly be made or confirmed in writing within 1 calendar month of the change.

6.5.4 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.

## 7.0 Definitions of Terms within these Standing Orders

### 7.1

Agent	A person or organisation authorised to represent the Council's interests and act on its behalf
Category Lead	A procurement specialist responsible for a class (category) of services or works. Formerly designated as a Directorate Procurement Manager.
Consultant	A person or organisation providing professional advice or services to the Council
Contract Manager	An officer or Agent of the Council authorised to exercise the functions of the Council as employer and-or client
Contracting Officer	An officer or Agent of the Council responsible for undertaking the design, competition and evaluation process leading to the award of a contract
Contractor	A person or organisation undertaking works or delivering services on behalf of the Council or to the Council.
Council	The London Borough of Hackney
Director	An officer reporting to a Group Director and defined as Tier 2 within the General Scheme of Delegation
External Framework	A framework contract let by an external organisation (such as Crown Commercial Services) which is compliant with the Public Contracts Regulations 2015 and can be accessed by the Council.
Group Director	An officer reporting to the Chief Executive and defined as Tier 1 within the General Scheme of Delegation
Procurement Instruction	Procedural advice, codes of practice or best practice guidance which explain but not override any provision in these Contract Standing Orders