

Contract Standing Orders

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Contract Standing Orders

Introduction

1 Introduction

- 1.1. This version of Contract Standing Orders (CSOs) dated 3 February 2022 approved by Full Council supersedes Contracts Standing Orders dated 27 July 2016.
- 1.2. This document is part of the Council's Constitution and is a requirement of Section 135 of the Local Government Act 1972.
- 1.3. CSOs set out the rules for all Council spending and the disposal of land. CSOs must be followed every time there is a requirement to:
 - a) purchase goods, works or services (including consultancy services)
 - b) enter into a contract for the disposal of land (see Section 2)
 - c) enter into contracts for hire and lease/rental agreements
 - d) enter into contracts for interim and agency workers
- 1.4. CSOs do not apply to contracts of employment.
- 1.5. CSOs should be read in conjunction with the Council's Procurement Strategy and Guidance Documents (which gives direction and advice on the appointment of Suppliers and setting up contracts), Financial Regulations and the Officer Code of Conduct.
- 1.6. The Monitoring Officer or their nominee will interpret and advise on legal issues arising from CSOs, subject to the statutory responsibilities of the Section 151 Officer.
- 1.7. All values in CSOs exclude VAT.

2 The Purpose of CSOs

- 2.1. CSOs have five main purposes. These are to:
 - a) provide a framework for the Council to get value for money when entering into contracts
 - b) enable the Council to demonstrate best value to the public

- c) set out how the Council complies with the laws that govern public spending
- d) protect the Council, Officers and Councillors from unfair criticism and allegations of wrongdoing
- e) regulate the manner in which bids, tenders and quotations are invited
- f) regulate the manner in which Suppliers are appointed.

3 ICT Procurement

3.1. All procurement activity relating to Information and Communications Technology must be undertaken in conjunction with ICT Services and Corporate Procurement. This includes but is not limited to:

- a) hardware, software and equipment
- b) consumables such as printer cartridges and keyboards
- c) telecoms.

4 Use of Agency Workers, Interims and Consultants

4.1. The engagement of Agency Workers and Interims must be undertaken in accordance with the Human Resources Policy Statement and Recruitment Policy. This states that:

- a) a full consultation with the Human Resources Manager must take place prior to any decision to engage an agency worker or interim.
- b) contracts with a recruitment/employment agency must be reviewed by the Human Resources Manager in agreement with the Director prior to any formal agreement being entered into.

4.2. All contracts for the appointment of a Consultant must be procured in accordance with CSOs in conjunction with Corporate Procurement.

5 Innovative Procurement

5.1. New or different ways of purchasing goods, works or services which give better value for money are encouraged. Proposals for innovative procurement should always be approved by the Legal Services Manager to ensure that the proposed procurement route is legally sound and where appropriate, OJEU compliant. Examples of innovative procurement solutions include:

- a) purchasing consortia, subject to following the consortium's procedures

- b) partnership agreements which involve a joint venture or contractual arrangement with a private sector body
- c) partnerships with the Third Sector
- d) shared services, partnerships or collaborations with other local authorities
- e) Framework Agreements
- f) Public Service Mutuals/Trading Company
- g) e-auctions.

6 Public Services (Social Value) Act 2012

- 6.1. Full consideration shall be given to the following matters when entering into service contracts. These are:
 - a) how proposed procurements could make local improvements and how these could be delivered via the procurement process
 - b) whether or not to undertake a consultation process
 - c) how what is being procured may improve the economic, social and environmental well-being of Harlow and the surrounding area.
 - d) equality, diversity and sustainability issues.
- 6.2. Reasonable steps should be taken to encourage a diverse and competitive supply market, including small firms, social enterprises, ethnic minority businesses, voluntary and community sector suppliers.
- 6.3. The Council has a duty to keep an accurate record and full audit trail demonstrating that its duties under the Act have been properly discharged.

7 Governance Expectations

- 7.1. The Council's Governance Expectations set out the Council's aspirations and how the Council expects its Suppliers to act. This document highlights areas that may apply to goods, works and services being procured, provided that this is proportionate and relevant to the subject matter of the contract, including:
 - a) blacklisting and other discriminatory practices
 - b) zero hours contracts

- c) Living Wage
- d) apprenticeship and local employment
- e) ethics.

8 Key Decisions

- 8.1. The letting of a large contract may be a Key Decision as defined below and will be administered in accordance with CSO 18 and CSO 44 for the disposal of land.
- 8.2. A Key Decision means a Cabinet/Portfolio Holder decision which is likely to:
 - a) result in the Council incurring expenditure which is, or the making of savings which are significant having regard to the Council's budget for the service or function to which the decision relates. Expenditure or savings are deemed to be significant if they exceed £350,000.
 - b) be significant in terms of its effects on communities living in an area comprising two or more wards or electoral divisions in the area of the local authority.

9 General Matters

- 9.1. Officers are required to seek early advice from Corporate Procurement for any procurement activity with an estimated value of £5,000 or greater.
- 9.2. Corporate Procurement will give the appropriate level of support, advice and guidance to Officers.
- 9.3. Failure to comply with CSOs may result in disciplinary action.
- 9.4. The Legal Services Manager will submit an annual report at the end of each financial year to the Corporate Management Team summarising procurement activity and issues arising during that period.
- 9.5. The Legal Services Manager will instigate an annual review of CSOs and arrange for the latest version to be available on the Council's internal and external websites.

Contract Standing Orders (Part 1) The Scope of Contract Standing Orders (CSOs)

1 Activities Covered by CSOs

- 1.1. These CSOs apply to every contract the Council enters into for:
 - a) goods, works or services (including consultants' advice and expertise)
 - b) contract hire and lease/rental agreements
 - c) concessions and sponsorship
 - d) the disposal of land with an estimated aggregate value equal to or above the sum currently specified in CSO 9 (and Section 2, CSO 33 for the disposal of land) and Financial Regulations
 - e) the appointment of interim or agency workers.
- 1.2. For every contract, the Director will:
 - a) delegate operational responsibilities to a Lead Officer who will be responsible for all the activities necessary to deliver the Council's objectives (including the arrangements for contract management and monitoring post contract award)
 - b) advise any agent, consultant or agency/interim member of staff appointed to act on the Council's behalf that they must also comply with CSOs, Financial Regulations and with all UK and EU governing legislation as if they were an Officer of the Council
 - c) ensure that everyone in their Service knows that they must follow CSOs, and avoid any impropriety or the appearance of impropriety
 - d) ensure that everyone in their Service knows that it is a disciplinary offence to fail to comply with CSOs

- e) ensure that everyone in their Service knows that if they have concerns in relation to breaches of CSOs that they can discuss the matter with the Legal Services Manager, Audit Manager or Monitoring Officer.
- 1.3. In all cases, the Lead Officer must notify Corporate Procurement before starting the procurement process to establish the appropriate procurement route and level of procurement support required.
 - 1.4. A simple reference in these CSOs to an Officer or Officers without any further description shall mean the Officer or Officers responsible to the Council for the conduct of any of the activities covered by these CSOs.

2 Legislation

- 2.1. The Public Contracts Regulations 2015 and all relevant and applicable government legislation and regulations for the time being in force in the United Kingdom must be complied with and shall prevail in relation to these CSOs.

3 Exceptions to CSOs (“Waivers”)

- 3.1. No exceptions shall be made from these CSOs otherwise than by a joint written decision of the appropriate Director and/or the Section 151 Officer in agreement with the Legal Services Manager and in consultation with the relevant Portfolio Holder.
- 3.2. This is permissible when Lead Officer has given detailed reasons for the Exception, such as efficiencies, savings, limited market, statutory duty or requirement, social value, furtherance of equality duty, engagement of SME or third sector organisation, or some other substantial reason.
- 3.3. The appointment by the Playhouse of Specialist Artists, and the appointment of Barristers, Arbitrators or similar shall be subject to prior written approval by the appropriate Director.

4 Probity

- 4.1. The Lead Officer must:
 - a) maintain a complete record of bids, offers, quotations or tenders received, reasons for making an award decision, Minutes of meetings, supporting correspondence and documentation
 - b) treat all Suppliers equally in an open, fair and transparent way
 - c) under no circumstances provide a Supplier with information that has not been given to other Suppliers bidding for the same contract

- d) under no circumstances disclose to Suppliers details of bids invited or prices received before a contract has been awarded.

5 Emergency Works

- 5.1. If an emergency or disaster threatens life or property CSOs may be deemed waived to the extent necessary in the circumstances, but the Lead Officer must report any action taken to the Legal Services Manager in writing within two weeks of the waiver.

6 Aggregation Rules

- 6.1. In estimating the value of a contract, the Lead Officer must not artificially split up any contract, either in structure, duration or value to avoid financial thresholds.
- 6.2. The estimated value of a single purchase must be calculated as follows:
 - a) Where the contract is for a fixed period, estimate the total cost over the whole of that period.
 - b) Where there will be a number of transactions over a period of twelve months, estimate the total cost over the full period.
 - c) Where the contract is for an uncertain or undefined duration greater than twelve months, multiply the annual estimated cost by 4.
 - d) Calculate the "whole life cost", applicable when the contract price will include additional/on-going costs such as maintenance and support, disposal, expenses, training. The estimated contract value is the sum of all of the amounts payable to the Supplier over the term of the contract, not just the initial purchase price.
 - e) Projected income payable to the Council.
 - f) Project income payable to the Supplier by a third party.

7 Specification

- 7.1. The Lead Officer must ensure that the specification:
 - a) clearly describes the Council's requirements in sufficient detail to enable the submission of competitive offers
 - b) includes relevant robust performance measures so that the contractor's performance can be properly and adequately monitored
 - c) incorporates all relevant quality standards, qualifications and accreditations

- d) does not discriminate or inhibit competition
- e) does not refer to trade names or patents unless “or equivalent” is also stated
- f) clearly sets out the mechanism for pricing, payments and delivery period.

7.2. The Lead Officer shall give consideration to social, economic, environmental, sustainability, equalities and diversity issues to the extent that they may be relevant and proportionate to the project.

8 Evaluation of Tenders and Quotations

8.1. The method of evaluation must be determined before inviting bids and this should reflect the type, value, duration and complexity of the contract. Suppliers must be advised how their bids will be evaluated and given weightings for all criteria and sub-criteria, where applicable.

8.2. The method of evaluation must not be altered after the closing date and time for the receipt of bids under any circumstances. Evaluation can be on the basis of:

- a) lowest price, where payment is to be made by the Council
- b) highest price, where payment is to be received by the Council
- c) most advantageous tender (e.g. 60% Quality, 40% Price)
- d) any other method clearly explained in the invitation to bid documentation that complies with relevant legislation.

8.3. Abnormally Low Tenders

- a) If any Tender is more than 20% less than the next lowest it will, on the face of it, be considered to be an abnormally low offer and the Council may seek an explanation from the Tenderer as to why this is the case and some assurances that the goods, works or services can be delivered at the price offered.
- b) To enable all tenders to be evaluated in full compliance with the principles of equal treatment and transparency the abnormally low tenderer should be asked to provide an explanation of their tender price to satisfy the Council that they can sustain the contract over the contract duration at no additional cost to the Council.
- c) The Council has a duty to the competing tenderers to investigate an abnormally low tender and may, subject to the foregoing, reject an abnormally low tender.

9 Thresholds and Award Process (excluding Consultants*)

9.1. The thresholds, minimum number of Suppliers to be invited to bid and the different award processes for appointing Suppliers are set out below.

Process	Threshold (Estimated Value of Contract)	Minimum Number of Suppliers	Awarding Contracts (refer to CSO 18)
Quotation	Less than £10,000	1	Lead Officer issues Agresso Order
Quotation (<i>Leaseholder Properties only</i>)	Low value Leaseholder contracts – see CSO 9.5, 9.6 & 9.7	3	Lead Officer issues Agresso Order
Quotation	£10,000 but less than £50,000	3	Lead Officer issues Agresso Order
Tender	£50,000 but less than £75,000	3	Lead Officer in agreement with the Director and Legal Services Manager
Tender	£75,000 but less than £350,000	4	Lead Officer in agreement with the Director and Legal Services Manager
Tender	£350,000 but less than £1 million and within budget or item within agreed capital programme within limit approved by council (i.e. within budget) **	5	Lead Officer in agreement with the Director and Legal Services Manager. Decision to award subject to approval of the relevant Portfolio Holder.
Tender	Non capital contracts of £1 million or contracts/tenders	5	Lead Officer in agreement with the Director and Legal Services Manager.

of £350,000 or greater outside of approved budgets **

Decision to award subject to approval of Cabinet or Full Council

***must be included on the Forward Plan of Cabinet*

** go to CSO 18.6 for consultancy award process*

9.2. The Public Procurement Regulations 2015 must be followed if the estimated aggregate value of a contract (inclusive of VAT) exceeds the following limits:

Goods and Services	£213,477
Works/Civic Engineering	£5,336,937

Thresholds are subject to review in January 2024

9.3. Leaseholder Contracts

- a) If the value of the goods, works or services directly affect leaseholder service charges by £250 or more per property, or £100 per property for a qualifying long term agreement of twelve months or greater, or such other value as may be prescribed from time to time by statute. The Home Ownership Manager must be notified to ensure that:
- i) Initial Notice of Intent leaseholder consultation is carried out and completed before tenders or quotations are sought, and that
 - ii) Notice of Estimates leaseholder consultation is carried out on returned tenders or quotations and completed prior to any award being made.

9.4. In such circumstances, a minimum of three Suppliers should be invited to bid to comply with Section 151 of the Commonhold Leasehold Reform Act 2002.

9.5. For leaseholder contracts with an estimated value of £10,000 or greater, the requisite number of Suppliers stated in CSO 9.7 (b), (c), (d) and (e) should be invited to bid.

9.6. The Lead Officer must ensure that sufficient time is allowed for leaseholder consultation prior to inviting bids and prior to awarding a contract. Each consultation period shall be a minimum of 30 days. Failure to do so will result in the Council being unable to recharge leaseholders for their proportion of the works.

9.7. For contracts with an estimated value:

- a) Below £10,000 - the Lead Officer must obtain a single quotation in writing from a suitably qualified Supplier (a Local Supplier should be appointed when possible)
 - b) £10,000 but less than £50,000 - the Lead Officer must seek at least three written quotations from suitably qualified Suppliers
 - c) £50,000 but less than £75,000 - the Lead Officer must seek at least three written tenders from suitably qualified Suppliers with the appropriate level of support and advice from Corporate Procurement.
 - d) £75,000 but less than £350,000 - the Lead Officer must seek at least four written tenders from suitably qualified Suppliers with the appropriate level of support and advice from Corporate Procurement.
 - e) £350,000 or greater - the Lead Officer must seek at least five written tenders from suitably qualified Suppliers with the appropriate level of support and advice from Corporate Procurement.
- 9.8. Where possible, a minimum of two Local Suppliers should be given the opportunity to bid provided that this does not distort competition and subject to robust pre-tender selection which may include but not limited to an evaluation of qualifications, experience, financial and economic standing being met .
- 9.9. Suppliers may be selected and appointed by one of the following methods listed in no order of priority in accordance with CSO 11.
- a) Selective tendering from an Accredited Supplier List
 - b) Following publication of an advertisement
 - c) A compliant Framework Agreement
 - d) Any other procurement route that must be agreed with the Legal Services Manager.

10 Selective Tendering (below advertising threshold)

- 10.1. The requisite number of suitably qualified Suppliers as specified in CSO 9, appropriate for the type and value of work, may be invited to bid (or in the case of 10.1 a) only) invite a business case for best value consideration in the following order of priority.
- a) Council Trading Arm (appropriate subsidiary)
 - b) Two available suitably qualified and experienced Local Suppliers
 - c) One available Supplier who has recently completed a successful

contract for similar goods, works or services

- d) Supplier(s) picked at random from an Accredited Supplier List.

11 Advertising Contracts

11.1. Below Threshold

The contract opportunity must be published on the MyTenders portal, Contracts Finder and any other appropriate advertising media if the estimated aggregate value of the contract is £25,000 or greater unless:

- i) the opportunity is made available only to the requisite number of particular Suppliers who have been selected for that purpose from a recognised Accredited Supplier List such as Constructionline or Exor
- ii) there are less than three appropriate Suppliers on an Accredited Supplier List in accordance with Regulation 110(5) of the Public Contracts Regulations 2015.

11.2. Above Threshold

The contract opportunity must be despatched to the Find a Tender Service (FTS) via the MyTenders Portal if the estimated aggregate value is within 10% of the thresholds shown below. The Contract Notice must also be published on Contracts Finder and any other appropriate advertising media no sooner than 24 hours after the Contract Notice has been despatched.

Goods and Services	£213,477 (inc. VAT)
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Works/Civic Engineering	£5,336,937 (inc. VAT)
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The above thresholds are subject to review in January 2024.

- 11.3. Contract Notices will be published by Corporate Procurement in consultation with the Lead Officer.

- 11.4. Public Contracts Regulations 2015 place a duty on Officers to publicise the Council's requirements to ensure that fair and equal opportunity is offered within the market. Adverts must be non-discriminatory and be sufficient to attract genuine competition.

- 11.5. Methods of advertising include (but shall not be limited to):

- a) Council's Website via the MyTenders portal.
- b) Advertising on Contracts Finder if the value is £25,000 or greater.

- c) Publishing a Prior Information Notice (PIN) to notify the market of future potential requirements.
- d) Publishing an advert in the local press and/or appropriate trade journals.
- e) Publishing an advert on an appropriate website and/or free press.
- f) Publishing an above threshold Contract Notice on Fina a Tender and Contracts Finder via the MyTenders portal.
- g) Advising current and former Suppliers and inviting them to register their interest.

12 Electronic Tendering

- 12.1. Tenders and quotations with a value of £10,000 or greater shall be conducted via the MyTenders portal (a secure e-tendering portal) with appropriate support and guidance from Corporate Procurement.
- 12.2. The Public Contracts Regulations 2015 place a duty on the Council, by means of the internet, to offer unrestricted and full direct access free of charge to the tender documents from the date of publication on FTS and Contracts Finder.

13 Tenders and Quotations

- 13.1. For works or services with a value of £10,000 or greater, at least two satisfactory responses to an invitation to tender or quote must normally be received. In circumstances where there is only one satisfactory response, the Lead Officer must be able to demonstrate that acceptance shall deliver value for money.
- 13.2. Every invitation to tender or quote should normally include:
 - a) Form of Tender
 - b) Instructions and Advice to Bidders (how to return a tender)
 - c) Anti-Collusion Certificate
 - d) FOI Exemption Certificate
 - e) Terms and Conditions
 - f) Specification
 - g) Tender Evaluation Methodology/Criteria

14 Opening Tenders and Quotations

14.1. Tenders and quotations received via the MyTenders portal do not require witnessing or Portfolio Holder attendance when opening. For tenders and quotations submitted in hard copy format, the following process must be followed.

14.2. Opening Tenders

- a) Returned tenders will be stored in a secure area by Contact Harlow until they are collected by a member of Corporate Procurement after the time and date for the receipt of tenders has expired.
- b) Tenders must be returned in a plain sealed envelope using the label supplied for this purpose strictly by the deadline stated. There must be no mention of the sender's name or any other way of identifying the bidder.
- c) The appropriate Portfolio Holder (or in their absence another Councillor) and a member of Corporate Procurement will open tenders with an estimated value of £50,000 or greater.

14.3. Opening Quotations

- a) Returned quotations will be stored in a secure area by Contact Harlow until they are collected by a member of Corporate Procurement after the time and date for the receipt of quotations has expired.
- b) Quotations must be returned in a plain sealed envelope using the label supplied for this purpose strictly by the deadline stated. There must be no mention of the sender's name or any other way of identifying the bidder.
- c) The Lead Officer and an appropriate witness may open quotations with an estimated value less than £20,000 and must keep a record of all bids received.
- d) A member of Corporate Procurement and an appropriate witness shall open quotations with an estimated value of £20,000 but less than £50,000.
- e) Tenders and quotations must be opened and results recorded simultaneously. A record of all bids with a value greater than £20,000 shall be retained by the Legal Services Manager.
- f) Details of prices received must be kept confidential until after the contract has been awarded.
- g) No Officer or Councillor who has a direct or indirect pecuniary interest may attend the opening of tenders or quotations.

15 Amending Tenders and Quotations

- 15.1. A tender or quotation can only be amended after it has been received and before it has been accepted to correct an error made in good faith provided that documentary evidence to justify the amendment to the tender or quotation is retained for audit purposes.

16 Late Tenders and Quotations

- 16.1. Any tender or quotation submitted in competition and received after the specified time and date shall be opened by the Legal Services Manager only to ascertain the name of the sender. No details shall be disclosed and the tender or quotation shall be disqualified from the process and be promptly returned to the sender other than in the following exceptional circumstances:
 - a) Where the Council's Offices were unexpectedly closed due to unforeseen circumstances so that tender or quotation could not be delivered on time.
 - b) Particularly severe weather conditions which delayed the arrival of a tender or quotation and where there is clear evidence of dispatch with sufficient time allowed for delivery to comply with the specified return time and date.

17 Negotiations and Discussions

- 17.1. Negotiations with bidders must not take place unless the appropriate procurement route was adopted at the outset in accordance with the Public Contracts Regulations 2015. Where permissible, negotiations must be accurately recorded and conducted in an open, fair and transparent way.
- 17.2. Discussions may be held following submission of tenders or quotations for the purpose of clarifying or supplementing the content of the bid and/or the requirements of the contracting entities only.

18 Accepting Tenders and Quotations

- 18.1. Only the lowest tender or quotation (or highest if payment is to be made to the Council) can be accepted unless the bids are evaluated on the basis of that which is the most advantageous tender, in relation to the criteria defined in the invitation to bid documents.
- 18.2. Contracts with a value less than £50,000 may be let by the Lead Officer by issuing an official Council Order through Agresso. The Order should identify the scope of the works/specification, duration, cost and Order/Project Number.

- 18.3. Contracts with a value of less than £350,000, within policy and budget, may be let by the Lead Officer in agreement with the Director and Legal Services Manager.
- 18.4. Contracts with a value of £350,000 or greater shall be let by the Lead Officer in agreement with the Director and Legal Services Manager subject to the approval of the Portfolio Holder, Cabinet or Full Council and a call-in period of five working days.
- 18.5. All contract awards with a value of £25,000 or greater must be published on Contracts Finder within three months of the award decision.
- 18.6. Appointing Consultants
- a) Contracts with a value less than £25,000 may be let by the Lead Officer by issuing an official Council Order through Agresso. The Order should clearly identify the scope of the services/specification, duration, cost and Order/Project Number.
 - b) Contracts for the appointment of a Consultant with a value of £25,000 but less than £100,000 shall be let by the Lead Officer in agreement with the Director and the Legal Services Manager in consultation with the relevant Portfolio Holder.
 - c) Contracts for the appointment of a Consultant with a value of £100,000 but less than £1 million shall be let by the Lead Officer in agreement with the Director and the Legal Services Manager subject to the approval of the relevant Portfolio Holder.
 - d) Contracts for the appointment of a Consultant, with a value of £1 million or greater shall be let by the Lead Officer in agreement with the Legal Services Manager subject to the approval of Cabinet or Full Council and a call-in period of five working days.
- 18.7. Appointing Agency or Interim Staff
- a) Contracts for the appointment of Agency or Interim Staff may be entered into subject to the agreement of the Director in consultation with the Human Resources Manager in writing.
- 18.8. Disposal of Land
- a) For awarding contracts relating to the disposal of land refer to Section 2.

19 Extending Contracts

- 19.1. Value Below £350,000

- a) A contract term (the length of a contract) may be extended by the Lead Officer in agreement with the Legal Services Manager and the Director provided that:
 - i) A provision to extend is included in the original contract and where applicable, the Contract Notice;
 - ii) the aggregate value of the contract extension is less than £350,000;
 - iii) sufficient funding has been approved to cover the cost of the proposed extension;
 - iv) the aggregate value of the contract will not exceed the Public Contracts Regulations 2016 threshold;
 - v) the proposed extension represents value for money;
 - vi) there are no statutory restrictions to prevent this; and
 - vii) the contract is being satisfactorily performed.

19.2. Value of £350,000 or greater

- a) A contract term (the length of a contract) may be extended by the Lead Officer in agreement with the Legal Services Manager and the Director subject to the approval of the Portfolio Holder, Cabinet or Full Council and a call-in period of five working days provided that:
 - i) provision to extend is included in the original contract and where applicable, the Contract Notice;
 - ii) sufficient funding has been approved to cover the cost of the proposed extension;
 - iii) the aggregate value of the contract will not exceed the Public Contracts Regulations 2015 threshold (unless original contract was advertised in FTS);
 - iv) the proposed extension represents value for money;
 - v) there are no statutory restrictions to prevent this; and
 - vi) the contract is being satisfactorily performed.

20 Contract Management

- 20.1. Contracts must be managed and monitored by the Officer as designated by the Director. The responsible Officer will keep complete records during the lifetime of the contract and should monitor, as a minimum:

- a) Performance/KPI's (*including Social Value*)
- b) Compliance with specification and terms and conditions
- c) Cost (keeping within budget and identifying savings)
- d) User satisfaction and continuous improvement.

21 Contract Formalities

- 21.1. Contracts with a value at or greater than £50,000 must be in writing and executed under seal or signed and delivered as a deed.
- 21.2. Contracts with a value below £50,000 must be signed by a duly authorised Officer.
- 21.3. Every contract will:
 - a) be governed by English Law
 - b) clearly specify the goods, works or services to be supplied
 - c) state the total price to be paid with a statement of discounts or other deductions together with the arrangements for payment including any retentions
 - d) state the time or times within which the contract is to be performed including any options to extend the contract
 - e) penalties for non-compliance/KPI's, liquidated and ascertained damages (to the extent that this may apply)
 - f) state the method of dispute resolution
 - g) state any other relevant matters relating to the due performance of the contract.
- 21.4. The original copy of all signed/executed contracts must be stored in a Deed Packet in Legal Services.

22 Bonds and Other Security

- 22.1. Performance bonds are not mandatory and should only be sought if proportionate to the demonstrable risks, nature and value of the contract.
- 22.2. Where necessary, risk may be managed by holding a bond deposit or increasing retention sums held.

- 22.3. Risk to the Council of default shall be mitigated by prudent pre contract contractor due diligence and selection, and whilst in contract applying clear and robust performance monitoring.
- 22.4. A parent company guarantee may be considered as an alternative to the provision of a performance bond subject to a risk assessment in accordance with the rest of CSO 22 above.

23 Insurances

- 23.1. All Suppliers must carry sufficient public liability, employer's liability, product liability and professional indemnity insurance appropriate to their business with the Council.
- 23.2. The Lead Officer/Contract Manager must ensure that:
- a) the supplier provides documentary evidence of cover before the contract begins, and that evidence of renewal is supplied if the insurance expires during the contract period
 - b) the level and type of insurance is sufficient to cover all the risks associated with the performance of the Contract
 - c) the supplier provides annual updates (including evidence of payment of premium for term contracts).
 - d) advice is sought from the Insurance Manager to ascertain the level and type of insurances required to protect the Council's risks.

24 Retendering

- 24.1. If, during the tendering exercise, a material change occurs in the value, duration or scope of a contract, formal re-tendering will be necessary to give all bidders an equal opportunity to consider the new requirements. For this purpose "what is a material change" will be determined by the Director of Governance and Corporate Services.

25 Declaration of Interest

- 25.1. Section 117 of the Local Government Act 1972 requires that any Officer employed by the Council who finds out that the Council has entered or is proposing to enter into a contract in which they have a "pecuniary" interest must notify the Council of that interest in writing, as soon as it is practicable. It is a criminal offence not to comply with this provision. The Director of Governance and Corporate Services will keep a complete record.

26 Freedom of Information Act (2000)

26.1. The Council's Access to Information Policy must be adhered to where requests for information relating to procurement activity are received under the Freedom of Information Act (2000).

27 Bankruptcies and Liquidations

27.1. The Legal Services Manager must be notified if a Supplier ceases to trade as a result of bankruptcy or liquidation and the action to be taken shall be agreed with the Director of Governance and Corporate Services on:

- a) terminating the contract;
- b) appointing a new Supplier to complete the contract;
- c) negotiating with liquidator/receiver/administrator; and
- d) assigning the contract and novation.

28 Disposal of Assets (including IT Equipment)

28.1. Financial Regulations must be complied with when disposing of the Council's assets including the disposal of stores and equipment. The Lead Officer must seek the best value reasonably obtainable for the Council, using an auditable process and ensuring compliance with all relevant legislation and Council policies.

28.2. The Lead Officer must retain a complete audit trail relating to any such disposals which shall be subject to consultation with the appropriate Director and the Director of Finance.

28.3. All disposals of ICT equipment must be undertaken by ICT Services.

29 Concessions and Sponsorship

29.1. The Council may seek Suppliers who are willing to pay the Council for the right to provide services in Council premises or on Council land such as vending rights. In such circumstances, Contract Standing Orders will apply.

30 Corrupt Practices

30.1. In relation to any contract with the Council, the Council will be entitled to give a Supplier notice that the contract has been terminated with immediate effect if the Supplier, or any person employed by the Supplier, or acting on its behalf, commits any offence under the Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

30.2. Every contract with the Council will include a clause empowering the Council to cancel a contract and to recover from the Supplier the amount of any loss resulting from such cancellation if the Supplier has committed any of the offences described in CSO 30.1 above.

Contract Standing Orders

(Part 2) Disposal of Land

31 Introduction

- 31.1. Except where otherwise provided in these CSOs, the following rules must be followed every time the Council disposes of or enters into a contract for the disposal of land (including the grant of options to purchase land).
- 31.2. For every contract, the Director will comply with CSO 1.2 above.

32 Exceptions

- 32.1. No exception will be made from Section 2 of these CSOs, other than by Cabinet or Council after considering a report to which the Legal Services Manager, the Section 151 Officer and the Property and Facilities Manager have contributed.

33 Authority to Dispose of Land

- 33.1. The Director has the authority to sell land:
 - a) with no development potential and an estimated market value of less than £10,000
 - b) with development potential and a proposed sale price of less than £10,000 provided there are betterment provisions to realise the value of the development potential
 - c) with an estimated market value between £10,000 and less than £50,000 in consultation with the relevant Portfolio Holder and the Section 151 Officer.
- 33.2. The Director has the authority to lease land:
 - a) for a period of less than seven years at a rent at or below best consideration reasonably obtainable.
 - b) for a period of seven years or more for an estimated aggregated rental value less than £50,000 in consultation with the relevant Portfolio Holder and the Section 151 Officer.
- 33.3. The terms of any other land disposals must be agreed by Cabinet or Council.

34 Entering into Contracts

- 34.1. Except where otherwise provided in these CSOs, contracts for land disposals must be entered into by one of the following methods:
- a) Selective bidding following publication of an advertisement.
 - b) Open competitive bidding following publication of an advertisement.
 - c) By Private Treaty.
 - d) By Auction.
 - e) Selective bidding by invited Housing Providers.
- 34.2. Methods of advertising are included in CS0 11.5 above.
- 34.3. Where an intended land disposal involves a contract of a kind requiring the Council to comply with EU Regulations, the scheme for the disposal shall ensure compliance with EU Regulations.

35 Selective bidding by advertisement (where EU Regulations do not apply)

- 35.1. An advertisement stating the nature and purpose of the proposed agreement and inviting formal expressions of interest will be placed in an appropriate newspaper and industry journal and will give a closing date by which expressions of interest must be received. This will be at least 28 days after the date of publication of the advertisement.
- 35.2. After the closing date (subject to satisfactory outcome of a financial appraisal (and where considered appropriate) a technical appraisal) at least four of those persons expressing an interest will be invited to bid or (if the expressions of interest are less than four) all persons who expressed an interest and whose appraisal meets a satisfactory outcome will be invited to bid.
- 35.3. The invitation for bids will provide information about any criteria to be used in evaluating the bids.
- 35.4. Officers responsible for drawing up or agreeing criteria will record the criteria in their files and record when and by whom the criteria were agreed.
- 35.5. For the purposes of this CSO 35 any successful bidder will be financially reappraised immediately prior to any award.

36 Selective bidding by invited Housing Providers

- 36.1. In the case of a proposed transaction falling within the scope of the Stansted Area Housing Partnership not less than two Housing Providers

shall (subject to satisfactory outcome of a financial appraisal) be invited to bid in accordance with the terms of that partnership arrangement.

- 36.2. In all other cases, at least four Housing Providers will (subject to satisfactory outcome of a financial appraisal) be formally invited to bid.
- 36.3. For the purposes of this CSO 36 all Housing Providers will be financially reappraised immediately prior to any award.

37 Best Consideration

- 37.1. The Council has a duty to secure value for money and when disposing of land must normally ensure that it obtains best consideration. This will be the market value of the land as defined by the Royal Institution of Chartered Surveyors.
- 37.2. If the Council receives a higher bid prior to exchanging contracts, it must decide whether to consider that bid. In making this decision, the Council must explore as far as is reasonable the merits of the alternative bid, the level of uncertainty surrounding the bid and the risk of accepting that offer. All of these factors must be weighed in the balance against the value and certainty of the existing offer.
- 37.3. Interested parties must be invited to make a final offer by a specified time and date.
- 37.4. Acceptance of an offer should be subject to completion within a specified and limited timescale of no greater than six months.
- 37.5. Terms should not be finalised without a current valuation but the costs associated with delays in the sale (for example lost interest and remarketing must be considered).
- 37.6. Details of individual bids should not be disclosed to any other bidder or potential bidder.

38 Sale At Less Than Best Consideration

- 38.1. In certain circumstances the Council has a power to dispose of land for less than best consideration without receiving the specific consent of the Secretary of State. Legal advice should be taken before committing to any such disposal.

39 State Aid

- 39.1. A disposal of land at an undervalue is capable of amounting to State Aid. State Aid applies where public funds can be said to subsidise a private operator in some way, and subject to certain exceptions it is generally unlawful.

39.2. Legal advice must be taken where State Aid could be involved.

40 Planning Permission

40.1. Where it is intended to sell land with an expectation that it will subsequently be developed consideration should be given to securing planning permission prior to the sale.

41 Marketing and Sale of Land – Choice of Procedure

41.1. Private Treaty

- a) A sale by private treaty occurs where negotiations are carried out between the Council and a prospective purchasers privately and normally without a time limit for exchange of contracts. This is a flexible and straightforward approach to land sale but its informality can increase suspicions of unfair dealing and cause difficulties in demonstrating that best consideration has been obtained.
- b) Sales by Private Treaty should only be accepted where the sale is within the delegated powers of the relevant Portfolio Holder, unless Cabinet or Council approval is granted. In such cases the Cabinet or Council report must set out the justification for the use of this procedure.

41.2. Sealed Tender

- a) Tenders must be invited at the same time with a fixed closing date and time.

42 Opening Tenders

42.1. CSO 14 shall apply to the opening of tenders except in the case of tenders invited under CSO 34.1e. (selective bidding by invited Housing Providers) in which case (for tenders with an estimated value of £50,000 or greater) an officer of Corporate Procurement and either another officer from Corporate Procurement or an officer from the Regeneration Team shall open tenders.

43 Negotiations with Developers/Purchasers

43.1. Negotiations with prospective developers or purchasers must wherever reasonably practicable take place at the Council's offices or those of the prospective developer or purchaser within normal office hours. At least two officers or one officer and an external consultant appointed by the Council to act on its behalf must be present and signed and dated Minutes must be kept for audit purposes.

43.2. Meetings and telephone conversations must immediately be followed by an exchange of correspondence to confirm the position.

44 Accepting Bids/Offers

- 44.1. No contract with a value at or above £50,000 will be entered into and no disposal shall take place without the consent of Cabinet or Council in accordance with CSO 33.3 above. Market conditions and the estimated period for completion of the transaction must be included in any Cabinet report.
- 44.2. The Cabinet report must include a recommendation as to what legal interest the Council would be best advised to dispose of, and the most effective way of disposing of an interest in order to secure the best terms reasonably obtainable.
- 44.3. Any proposal to dispose of land for less than the best consideration reasonably obtainable will require the consent of Cabinet or Council and any report for this purpose will advise Councillors of the requirement or otherwise to obtain the consent of the Secretary of State.
- 44.4. Any decision to dispose of land at less than the best consideration reasonably obtainable or at less than market value will be supported by recorded evidence.
- 44.5. In the case of disposal by auction, the proposed sale will always be subject to a reserve price of not less than a current valuation.
- 44.6. The terms of any contract will not be finalised without the benefit of a current valuation of the land in question.

45 Revised Bids/Offers

- 45.1. Should a preferred developer or the highest bidder or a person making the highest offer seek to substitute a lower offer or bid, Officers will on every occasion give to all making bids or offers the opportunity of making a further bid or offer by a specified date and time.

46 General Requirements

- 46.1. Following the decision of Cabinet to give its consent under CSO 33.3, Officers will take all practicable steps to secure an early exchange of contracts.
- 46.2. If contracts have not been exchanged within six months of the date of Cabinet consent, Officers will be required to invite fresh bids from all the bidders and any other person who originally expressed a formal interest.
- 46.3. The valuation of best consideration can change quickly and a prompt completion will be necessary to avoid selling at an undervalue.
- 46.4. An appropriately qualified or experienced officer shall always be present when bids are being evaluated.

46.5. CSO 46.2 shall not apply in cases where the negotiated procedure (within the meaning of the EU Regulations) has been adopted.

47 Exemptions and Special Cases

47.1. Right to Buy

- a) Disposals pursuant to the Right to Buy will not be subject to these CSOs but shall be conducted in accordance with the relevant provisions of the Housing Act 1985 or any modification or re-enactment of the same.

47.2. Sale of Additional Land to Owner Occupiers

- a) The disposal of land to owner occupiers which does not exceed in extent on half of the garden land then currently owned by the owner occupier at the property in question, shall only be subject to approval of the Director.

47.3. Commercial Portfolio Leases

- a) Applicable to the grant, assignment or sub-letting of leases comprising any part of the Council's Commercial Portfolio, as managed by the Property and Facilities Management Service. These transactions will only be subject to the approval of the Director.

47.4. For the avoidance of doubt the Commercial Portfolio includes "community lettings".

47.5. Any matter or authority delegated to any officer from time to time by the relevant Portfolio Holder or Cabinet or Full Council.

Contract Standing Orders

Definitions

Unless the context otherwise requires, in this document the terms below shall have the meanings ascribed to them:

1 Accredited Supplier List

- 1.1. means an accredited source such as Constructionline, Exor, a purchasing consortium, framework agreement, Housing Providers (for land disposal only) or other similar sources as may be approved by the Legal Services Manager

2 Agency Staff

- 2.1. means a person(s) sourced through Recruitment/Employment agencies to cover short term vacancies, temporary increases in workload or where it has not been possible to fill positions through normal Council recruitment policies.

3 Bond

- 3.1. means a legally enforceable financial guarantee given by a third party (the guarantor) to the Council to guarantee the obligations of a Supplier under a contract. (This is commonly referred to as a performance bond)

4 Consultant

- 4.1. means a person(s) or body that supplies professional, technical advice or expertise but does not include workers engaged through a recognised staff agency agreement, interim arrangement and/or the supply of a management role in addition to professional/technical advice or expertise. A consultant is supernumerary and would carry out a one-off project that is time-limited

5 Council

- 5.1. means Harlow District Council.

6 Councillor

- 6.1. means an elected member of the Council.

7 Council Trading Arm

7.1. means HTS Group (Company Registration Number 09929960 acting through its subsidiary trading arms)

8 CSOs

8.1. means the Council's Contracts Standing Orders which form part of the Constitution and set out the rules for the procurement of goods, works and services and the disposal of land/land transactions.

9 EU

9.1. means European Union.

10 EU Regulations

10.1. means the Public Contracts Regulations 2015 or any regulations as may replace or modify the same.

11 EU Threshold

11.1. means £172,514 for the supply of goods and services and £4,332,012 for works (new thresholds apply with effect from January 2016).

12 Emergency

12.1. means a requirement which could not reasonably have been foreseen and cannot be delayed or deferred.

13 Financial Regulations

13.1. means the Council's Financial Regulations that set out the rules and procedures for financial management and the conduct required of Council staff in dealing with financial matters. This document is issued by the Director of Finance and forms part of the Constitution.

14 Framework Agreement

14.1. is a non-binding agreement that may be entered into with a single Supplier or several Suppliers, setting out the terms and conditions and scope of the goods, works or services under which future purchases (or call offs) can be made throughout the term of the agreement and that any such agreement shall normally have been subjected to an OJEU compliant competitive tendering exercise.

15 Goods, Works and Services

15.1. should be taken as defined in the latest version of the EU Procurement Directives.

16 Housing Provider

16.1. means a registered provider of social housing within the meaning of the Housing and Regeneration Act 2008 or any statutory modification or re-enactment thereof.

17 Interim Staff

17.1. means a person(s) sourced through Recruitment/Employment agencies to cover short term vacancies, temporary increases in workload or where it has not been possible to fill positions through normal Council recruitment policies.

18 Lead Officer

18.1. means a named officer delegated by a Director to be responsible for the procurement of specific supplies, services or works including the disposal of land and where appropriate, the Lead Officer shall be a Corporate Procurement Officer. The Lead Officer will seek advice, guidance and support from Corporate Procurement when seeking to invite tenders and quotations, issue orders and let contracts within the scope of these CSOs.

19 Leaseholder Properties

19.1. means those flats or maisonettes sold in respect of which leases have been granted pursuant to Part 5 of the Housing Act 1985.

20 Local Supplier

20.1. means any contractor, consultant, supplier of goods, works or services that is based within a radius of ten miles of Harlow.

21 Monitoring Officer

21.1. means the officer designated pursuant to Section 5 of the Local Government and Housing Act 1989.

22 Novation

22.1. means the agreed transfer to another Supplier of the full obligations and rights under a contract.

23 OJEU

23.1. means the Official Journal of the European Union.

24 Portfolio Holder

24.1. means a member of the Council's Cabinet with a designated set of responsibilities.

25 Quotation

25.1. means an offer or bid to supply or purchase land, goods, or materials, execute works or provide services including consultancy, at a stated priced based on terms and conditions agreed with the Supplier. For the purpose of CSOs, the Council uses the term Quotation for the simpler procurement process to be followed for estimated contract values less than £50,000.

26 Section 151 Officer

26.1. means an officer appointed in accordance with Section 151 of the Local Government Act 1972.

27 Supplier

27.1. means the party or potential party to a contract who supplies goods, works or services or enters into a contract for the disposal of land.

28 Tender

28.1. means an offer or bid to supply or purchase land, goods, or materials, execute works or provide services including consultancy, at a stated priced based on terms and conditions agreed with the Supplier. For the purpose of CSOs, the Council uses the term Tender for the more complex procurement process to be followed for estimated contract values of £50,000 or greater.

29 Third Sector

29.1. means social enterprises, mutuals, charities, voluntary bodies, trusts etc.