



Model Contract Standing Orders

Best practice guidance on developing a modern set of
CSO's that address the commercial challenges in Local
Government Procurement

HEDRA.

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1. INTRODUCTION

This section provides relevant background information about this project and defines both the scope and key objectives.

1.1 BACKGROUND

In June 2005 the London Centre of Excellence commissioned a piece of work to review Contract Standing Orders (CSO's) across the London authorities with the objective of identifying barriers to collaborative procurement. The concern was that variations in rule sets and legal issues may be in some way hindering collaborative activity. The purpose of the review was therefore to ascertain whether CSO's and their variations were indeed a barrier in themselves whilst understanding what the wider barriers are and to make recommendations for change.

The initial stage of the review was to collect a representative sample of CSO's from the London authorities. Seventeen London Boroughs and the London Fire and Emergency Planning Authority submitted examples. The analysis of this information formed the core of the review with the focus being on issues that could have a significant impact on collaborative procurement. To support the project, procurement managers and other relevant officers were invited to a workshop on 29th June 2005 at the LCE followed by a number of one-on-one interviews. This was to provide a deeper understanding of the current barriers to collaboration and to identify effective solutions and potential procurement routes.

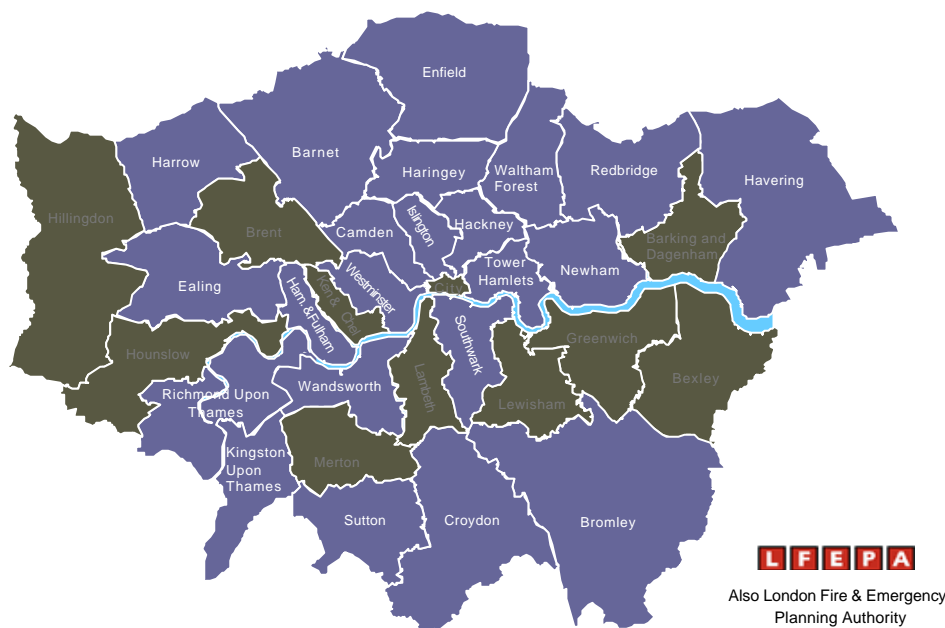


Figure 1: Participating London Authorities

In total, twenty-two London authorities contributed to the review and details of participants are shown in figure 1 above. Such a positive response provided a balanced overview from organisations with different operational cultures, political make-up and social issues.

1.2 KEY FINDINGS OF THE AUGUST REVIEW

A number of key differences were noted during the June 2005 CSO review. A full version of the report is available on the LCE website but a number of key findings are listed as follows:

- 1. Disparity in approach.** There was significant disparity in approaches to CSO's – name and size of documents, definitions, content and style. Some focused on legal compliance whilst others concentrated on operational procurement issues. There was great variation in size and there wasn't even consensus on the name! The name and style of documentation was often a reflection of the different political, social and economic issues being faced by the authority.
- 2. The general goal was the same.** It is easy to find differences between the CSO's but the general goal of the documents is the same i.e. to provide a legal and operational framework to undertake procurement on behalf of the authority. This leads to common areas that are typically addressed in all CSO documents. This can be categorised into four key themes: **process, authorisation, legislation and contract management.**

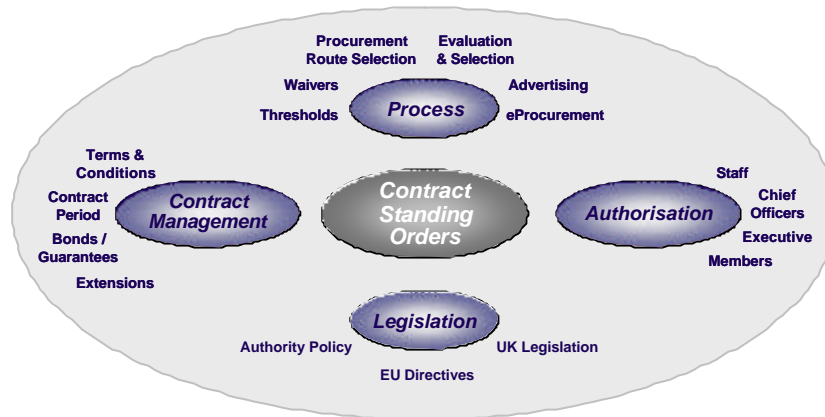


Figure 2: Key themes in CSO documentation

- 3. Lack of collaboration and partnering coverage.** With the current focus on collaborative contracting, it was disappointing that only four CSO's have explicit clauses covering collaboration and partnering. Typically, the CSO's stated that where partnering was to occur, one set of CSO's would take precedence.
- 4. Wide disparity on financial thresholds and tender process.** All CSO's in the review outline a level at which formal tendering is required. The threshold values specified in the CSO have provided the greatest variation across the sample with the authorities using very different approaches. The thresholds range from £20,000 to £100,000 with an average of just under £47,000. Tendering is employed by all authorities from this level up to the EU thresholds but the actual requirements and process undertaken varied by organisation.
- 5. Roles and responsibilities were unclear and varied.** Roles and responsibilities varied enormously. Some authorities had significant member involvement in the awarding of contracts whilst others used only officers for this task. Also, Director level exemption and waiver controls were found to be inconsistent.
- 6. Guidance on frameworks was found lacking.** Framework contracts are now formally recognised in the new EU directive that has been introduced in the UK in January 2006. With successful framework contracts in place through a number of central purchasing bodies and other bodies, this can prove to be a very cost effective procurement route. Some CSO's detailed and encouraged the use of framework contracts but others did not specifically cover this area. If frameworks were to be used in the latter case, there is a possibility that the contracts used could be in breach of CSO's. It would seem appropriate for all CSO's to have explicit details of how and when to use framework contracts.

7. Guidance on exemptions and waivers was inconsistent. Within virtually all CSO's there were specified exemptions and waivers from following standing orders. Some exemptions are clearly appropriate, for example procurement during an emergency but care must be taken to ensure that no exemption contravenes either EU procurement legislation or any other applicable legislation. The stronger CSO's required documented reasons for all exemptions and waivers and very senior authorisation following legal advice to be undertaken.

8. Technology guidance was weak and practices were often out of date. As technology becomes more integrated into authorities' infrastructure to meet targets for eGovernment, it is important that procurement can be undertaken in an electronic manner. Many of the CSO's have prescriptive methods of how to undertake procurement using traditional methods, which could limit the introduction of any eProcurement solution.

In conclusion, the review noted that whilst CSO's themselves may not be acting as a barrier, it certainly is unhelpful to have such inconsistency in rules and process. A move towards a more consistent model would not only be beneficial to support collaborative partnering across London, but would also help authorities modernise their procurement activity so that it can react to the more challenging commercial environments they are operating in. It is important for authorities to realise that CSO's are not just about legal compliance but are there to underpin the commercial approach for achieving value for money and efficiency.

1.3 GUIDANCE PAPER PURPOSE AND OBJECTIVES

This guidance paper is a follow-on from the initial CSO review completed in August and its purpose is to provide guidance to enable authorities to move towards a more consistent and contemporary set of rules and procedures that is supported by best practice.

The objectives of this paper are as follows:

- To address some of the variances and issues highlighted above so that the London authorities can move towards a more consistent best practice model.
- To provide guidance and sample text for procurement practitioners when undertaking a refresh of their CSO's.
- To provide guidance that will ensure CSO's support new collaborative working arrangements and modern procurement practices.

The Chief Executive of the LCE, Martin Pilgrim, has written to the Chief Executives across London inviting them to re-visit their CSO's given the findings of the initial review. This report will support that activity and provide guidance for the authorities when they undertake their CSO review.

2. MODEL CSO'S AND BEST PRACTICE GUIDANCE

This section provides best practice guidance on developing CSO's by theme or heading. The guidance is structured to provide general comments, potential issues, recommendations/best practice and sample text where appropriate for each theme or CSO heading provided. This is not aimed to be a definitive list of headings but rather a suggested minimum set. More headings are likely to be required depending on the authorities' requirements and current procurement practices.

*This paper is for **guidance only** and is not intended to be utilised as a definitive set of advice or text. All CSO's are the responsibility of the authorities themselves and will need to secure approval through the appropriate channels.*

2.1 OVERALL STYLE AND FORMAT OF CSO DOCUMENTATION

2.1.1 GENERAL COMMENTS

The style and format of CSO's is important for ease of use and understanding. A recommended format is to have **two documents** as part of a suite of procurement documentation. The two documents can stand alone but should also complement each other. The two recommended documents are:

1. **Contract Standing Order Rules.** This document contains the CSO rules themselves and should ideally be no more than 10-15 A4 pages in length with the rules stated under clear headings or themes.
2. **A Procurement Guidance or Code of Practice document.** This document should support the rules and provide practical examples of rule application and usage. This can be a larger document which also contains further details on process and procedures.

There is often confusion around what procurement documentation is appropriate or required. A suite of documents is recommended which includes the following: Procurement strategy (which needs to be linked to the Corporate/Business strategy), Contract Standing Orders, Procurement Guidance, Specific policy documentation relating to areas such as environmental issues, equal opportunities and regeneration.

2.1.2 POTENTIAL ISSUES

- Documents are often too lengthy and the CSO's are difficult to find which results in them not being read.
- Lost in other documents such as Constitutions, which results in the CSO's being difficult to locate.
- Some council officers are not aware of the CSO's and there is a high risk that the rules may sometimes not be being applied.
- Documentation can be difficult to read and understand. The language is often too legal.

2.1.3 RECOMMENDATIONS/BEST PRACTICE GUIDANCE

- The two document approach outlined above is recommended. The documents should be part of suite of documents which can also stand alone.
- Documentation needs to be easily accessible, ideally located on the Intranet.

- Documents need to be concise, easy to understand and written in plain English.
- It is important for authorities to realise that CSO's are **not just about legal compliance** but are there to underpin **the commercial approach for achieving value for money and efficiency**.
- Practical examples should be offered to prevent ambiguity on rules. These examples could be located in the supporting procurement guidance document which can be a larger document.
- Definitions need to be clear and concise and a glossary of terms provided.
- Consultation is essential when refreshing the CSO's to ensure completeness and buy-in. A working group should be setup to include Legal, Audit and other key users such as Procurement Managers and Heads of Service. The CSO review should be a **procurement led** activity as this is their core area of expertise. A wider consultation group should then be established to test drafts of the updated CSO's and associated guidance. The CSO's typically require Cabinet approval prior to launch which should be communicated appropriately to each stakeholder and user grouping.
- A proper communication should then be undertaken to launch the updated CSO's to ensure successful adoption and interpretation. The key user group identified earlier should have a role to play in ensuring adoption and compliance in their own areas. It is essential that the disciplinary procedures for non-compliance are outlined.
- A help desk or support team should also be in place for ongoing questions and guidance. This should be communicated at the same time as the launch and is typically a resource identified in the Strategic Procurement Unit.

2.1.4 SAMPLE TEXT

SAMPLE INTRODUCTORY TEXT

- 1.01. Procurement decisions are among the most important decisions a manager will make because the money involved is public money and the Council is concerned to ensure that high quality goods, works and services are provided. Efficient use of resources in order to achieve best value is therefore an imperative. The Council's reputation is equally important and should be safeguarded from any imputation of dishonesty or corruption.
- 1.02. For these reasons it is a disciplinary offence to fail to comply with Contract Standing Orders and the Procurement Code of Practice when letting contracts and employees have a duty to report breaches of Contract Standing Orders to an appropriate senior manager and the Head of Audit.
- 1.03. Reference should be made to the Procurement Code of Practice for more detailed procurement procedures.

SAMPLE DEFINITIONS AND INTERPRETATION

- 2.01. These Contract Standing Orders are made pursuant to section 135 of the Local Government Act 1972 and shall come into force with this Constitution.
- 2.02. Unless the context otherwise requires, in these Contract Standing Orders the terms below shall have the meanings ascribed to them.
 - a) **"Director"** means an employee of the Council holding a post designated as Director, Chief Executive or Assistant Chief Executive.
 - b) **"EU"** means European Union.
 - c) **"Executive"** means the Executive of Haringey Council or any other formally constituted Member body operating within the terms of its reference (e.g. the Executive Procurement Committee).

Source: London Borough of Haringey CSO's – Mar 2005

2.2 SCOPE OF CSO'S AND STATEMENT OF PRINCIPLES

2.2.1 GENERAL COMMENTS

Contract Standing Orders should apply to **all contracts “for the procurement by the Council of works, goods and services”**. It is essential that council officers and members are clear as to the scope and purpose of CSO's and how they should be adhered to and applied. Councils spend enormous sums of public money on the purchase of a diverse set of goods and services where the budgets are largely controlled in service area 'silos'. This makes for a very challenging and complex procurement environment which requires clear focus and operational support to ensure intelligent buying decisions are made.

The rules that govern public sector procurement (OJEU Legislation) can also be subject to change, as well as the impact of central government initiatives such as Gershon, the National Procurement Strategy and the pressures to amalgamate resources and collaboration. In addition to the complexities of Local Government procurement, the supplier markets that serve Local Government are subject to rapid change and must be engaged with appropriately. The CSO's therefore need to be designed to meet with these challenges and must be capable of flexing to different market requirements with specific rules and process in place where variances or complexities are likely to arise.

2.2.2 POTENTIAL ISSUES

- Council officers are not sure when to use the CSO's or why. They are often not sure whom to speak to for guidance or points of clarification.
- They perceive rules and guidance of this type as unhelpful and as hindering the process to a less desired outcome.
- The CSO's are too generic or high level and there is not enough 'flex' built in to deal with fast moving markets. A good example of this is the energy market which requires decisions to be made in hours as oppose to weeks.

2.2.3 RECOMMENDATIONS/BEST PRACTICE GUIDANCE

- The principles and scope therefore need to be clear and a true test of this is checking usage and compliance after the CSO's are launched.

2.2.4 SAMPLE TEXT

SAMPLE STATEMENT OF PRINCIPLES

1. The Contract Standing Orders provide the framework rules for the Council's procurement of works, goods and services. Following them will ensure value for money, propriety and the proper spending of public money.
2. The Procurement Code of Practice provides more detail and shall govern Council tendering and contract procedures. The Director of Finance and Head of Procurement shall maintain and issue the Procurement Code of Practice. Any procurement activity shall proceed in accordance with the Contract Standing Orders and the Procurement Code of Practice.
3. The Head of Procurement shall make the latest version of the Contract Standing Orders and the Procurement Code of Practice available to every Director and Member of the Council. Directors or officers acting on their behalf shall apply the requirements of the Standing Orders and the Procurement Code of Practice when engaging in any procurement activity.

SAMPLE STATEMENT OF PRINCIPLES CONTINUED

4. The purpose of procurement activity shall be to achieve best value for local people in accordance with the Council's statutory or approved objectives. This should include an innovative approach to building partnerships with the private and not-for-profit sectors within a robust contractual framework. Officers with responsibility for procurement shall ensure that they are able to demonstrate achievement of best value by having regard to a combination of economy, efficiency and effectiveness.
5. Every contract or official order for works, goods or services made by the Council shall be for the purpose of achieving the Council's statutory or approved objectives and shall conform to all relevant English and European Union legislation.

Source: London Borough of Haringey CSO's – Mar 2005

2.3 TENDER PROCEDURES AND PROCESS

2.3.1 GENERAL COMMENTS

It is essential that the CSO rules are supported by a robust set of processes and procedures with clearly identified roles and responsibilities for each step. The process should be built around the financial thresholds providing clear guidance on which procurement route should be adopted according to estimated contract value and potential risk. The CSO's should outline the tender process but a full version of the process can be represented diagrammatically as a standalone document or within the Procurement Code of Practice documentation.

A visual process diagram is recommended utilising best practice BPR methods and standards such as the Visio tool provides to highlight entry, decision and closure points as well as clearly documented ownership in swim lanes. The process can then be drilled down into the appropriate level of detail as required to provide a 2-dimensional toolset which is simple and easy to follow. An example is shown in the sample text below.

2.3.2 POTENTIAL ISSUES

- The process is difficult to follow and process ownership is unclear.
- The **contract value estimation is key** in order for the thresholds and process to be properly adhered to. Works and services contracts also behave slightly differently. For **works contracts the spend must be aggregated for the full contract value**. For example, if spend with a particular supplier occurs on multiple transactions then this must be aggregated to a total estimated value. **For services**, it depends on the value of the total commitment given at the point of awarding the contract. Therefore, if there is an intention to award a contract for more than 1 year then the total value should be the **aggregated value for the total period of the contract**. For an indefinite contract period beyond 2 years then the estimated value for 48 months should be used. **This area often causes confusion and can lead to a breach of thresholds and process accidentally if not properly adopted.**

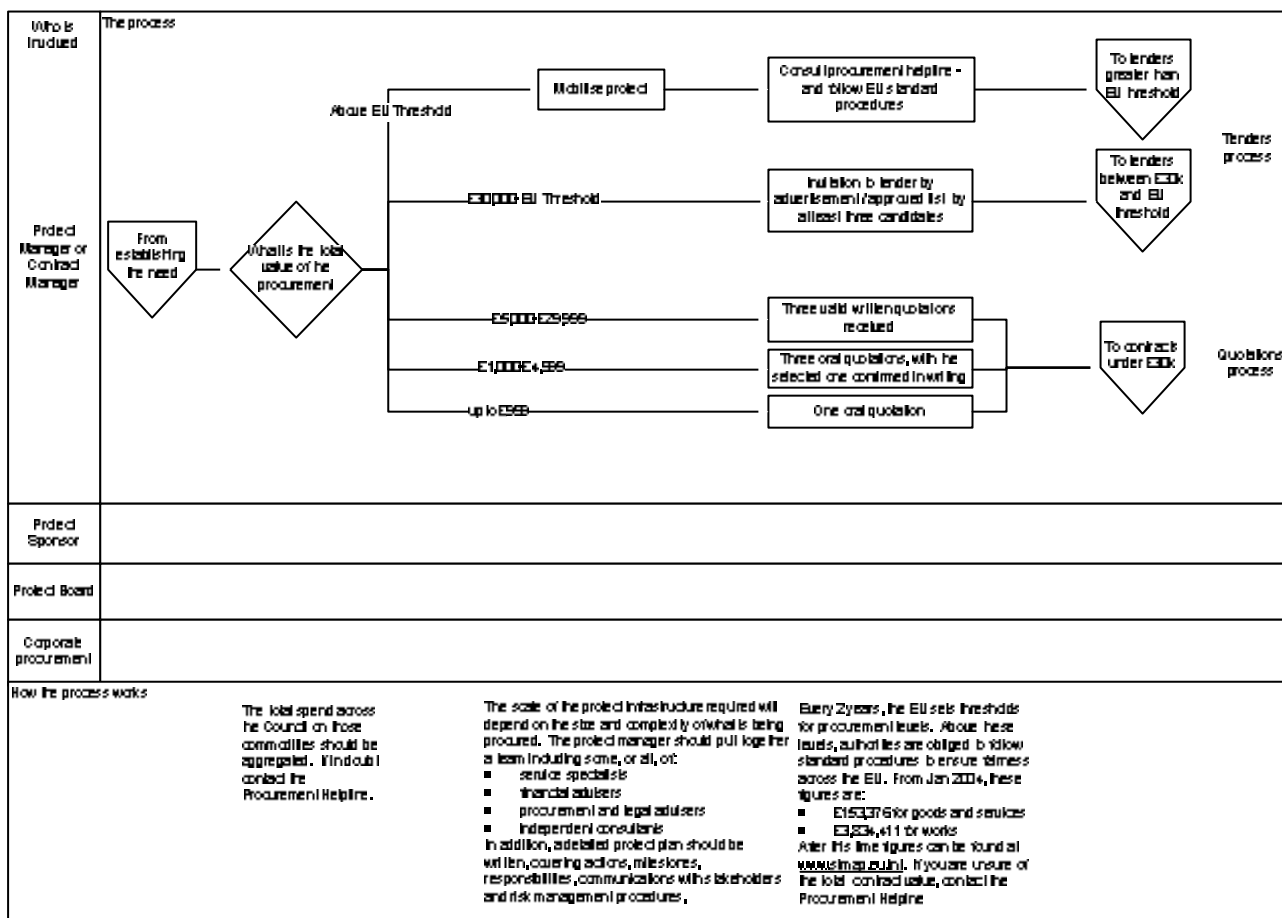
2.3.3 RECOMMENDATIONS/BEST PRACTICE GUIDANCE

- A visual diagrammatic representation of the process is recommended which adheres to BPR methodology standards.

- The process documentation must be kept up to date and version control and access is important.
- Unless otherwise specifically provided, where a value or an estimated value is given in these Contract Standing Orders it means the aggregate value payable in pounds sterling exclusive of Value Added Tax over the entire contract period.
- Contracts must not be artificially under or over estimated or divided into two or more separate contracts where the effect is to avoid the application of Contract Standing Orders.
- Similar to the CSO documentation, a helpdesk facility is recommended for people to contact for points of clarification and guidance on the process.
- Process needs to be made flexible according to the markets it's being applied to. For example, the energy market expects buying decisions to be made over hours rather than months. Cabinet decision cycles can therefore be inappropriate for these types of markets.

2.3.4 SAMPLE TEXT

The procurement process



2.4 ROLES AND RESPONSIBILITIES

2.4.1 GENERAL COMMENTS

Roles and responsibilities need to be clearly outlined so that officers and members are clear about what's expected of them at each stage in the procurement cycle. Checks need to be in place to safeguard against corrupt practices. For example, a requisition should not be approved by the same person.

There is often a debate about member involvement and their role in procurement. Members should clearly be kept informed but it may not be necessary to involve them in the day-day tender activities as this could lead to unwanted process delays. A sensible balance needs to be found between control and benefits gained so that process and ownership is appropriate according to size and type of spend.

Specialist expertise in market or service areas needs to be leveraged wherever possible as this will ensure higher quality tender documentation with resulting improved supplier responses and selection. There needs to be a **clear audit trail where decisions have been made** and spot checks should be made to ensure due process is being adhered to.

2.4.2 POTENTIAL ISSUES

- Unclear roles and responsibilities can lead to confusion and unnecessary lengthy tender cycle times.
- Roles and responsibilities not being clearly documented can result in maverick behaviours and poor decision making. Accountability in authorities can sometimes be an area of concern.
- Members are unclear on their role in the process which can create unnecessary bureaucracy and can be time consuming.

2.4.3 RECOMMENDATIONS/BEST PRACTICE GUIDANCE

- Officers and in particular Directors need to take their procurement responsibilities seriously and need to be held accountable for their decisions. There needs to be clear documentation and if necessary training to ensure responsibilities are successfully adopted.
- Disciplinary procedures need to be invoked where there has been a clear breach of process or serious non-compliance.
- A culture of 'if in doubt seek advice' needs to be fostered and the Strategic Procurement Unit needs to support this.
- A procurement community is recommended where officers are actively involved in procurement are given adequate training and communicated with on a regular basis to ensure best practice compliance. Training could include contractual law and general specification development.

2.4.4 SAMPLE TEXT

THE ROLE AND RESPONSIBILITIES OF DIRECTORS – SAMPLE TEXT

- 3.01. The Director has responsibility for all contracts tendered and let by his/her Directorate. He/she is accountable to the Executive for the performance of his/her duties in relation to contract letting and management, which are:
- a) to ensure compliance with English and EU legislation and Council Policy;
 - b) to ensure value for money in all procurement matters;
 - c) to ensure compliance with Contract Standing Orders and the Procurement Code of Practice;
 - d) to maintain a departmental scheme of delegation;
 - e) to ensure that all relevant staff are familiar with the provisions of Contract Standing Orders and the Procurement Code of Practice and that they receive adequate training on their operation;
 - f) to ensure compliance with any guidelines issued in respect of these Contract Standing Orders;
 - g) to take immediate action in the event of a breach of Contract Standing Orders or the Procurement Code of Practice within his or her area;
 - h) to keep proper records of all contracts, tenders etc. including minutes of tender evaluation panels and other meetings;
 - i) to keep records of waivers of any provision of these Contract Standing Orders;
 - j) to make appropriate arrangements for the opening of tenders and their secure retention so as to protect the integrity of the tendering process;

Source: London Borough of Haringey CSO's – Mar 2005

2.5 FINANCIAL THRESHOLDS

2.5.1 GENERAL COMMENTS

It is important for authorities to demonstrate a fair and open approach when purchasing but undertaking a formal tender process has a significant cost associated for both authorities and suppliers. These costs can far exceed any potential savings made through competition. Therefore, it is important to balance the contract value with potential risk to the authority and the competitive nature of the particular market.

To encourage healthy competition between suppliers from EU member states the European public procurement directives for supplies, services and works mandate specific rules and regulations for contracts above particular values, known as thresholds. The actual values are based on an International Monetary Fund rate and the thresholds are transposed into £ sterling every two years. The current values for local and regional authorities are shown below.

	Supplies	Services	Works
Threshold	£144,371	£144,371	£3,611,319

EU Thresholds for local and regional authorities (From 31st January 2006)

The purpose of the thresholds is therefore to encourage efficiency and healthy competition as oppose to creating unnecessary process and expense.

2.5.2 POTENTIAL ISSUES

- Without a robust and efficient process which is supported by acceptable threshold values, there is the risk of legal challenge and a perception within the supplier base of an inconsistent approach.
- Potential for a disproportionate cost of undertaking tendering exercise if thresholds are set to low.
- Tender process can be overcomplicated with too many procurement routes and thresholds being set. The process needs to be simple and clearly outlined in a table as suggested below.

2.5.3 RECOMMENDATIONS/BEST PRACTICE GUIDANCE

- The table below details the recommended thresholds for a London Borough to adopt with associated award procedures, owner, audit requirements and member involvement. It is recommended that the **EU Thresholds are adopted as the minimum formal tender threshold levels**. This is to prevent unnecessary cost and controls which will deliver little benefit to the authority. Alignment of the authorities thresholds to the EU thresholds will also simplify the tender process and minimise confusion over two sets of thresholds. This approach would need to be supported by wider procurement best practice, which includes adequate training, spot checks and an appropriate procurement organisational model.
- Whilst these thresholds may present a significant leap for many Boroughs as some formal tender thresholds are currently set well below the EC Threshold of £144,371. There is significant evidence from spend analysis undertaken by the LCE that higher thresholds

supported by rigorous audit procedures and spot checks may be a more appropriate level of control for a number of reasons. Firstly, the cost of a simple sealed bid process can easily reach £50k which presents the potential issue of the tender process costing more than the expenditure itself. Secondly, a number of suppliers have admitted that they factor in the cost to bid into their costings, especially when dealing with Local Government clients which leads to inflated costs and non-competitive pricing. Thirdly, the volumes of transactions in the lower levels are huge yet they account for a small percentage of the actual council spend, leading to administrative control being focused on the wrong spend area.

- It would also be beneficial for London Boroughs to move towards these higher thresholds outlined in the table as alignment of thresholds and procurement routes would support and enable collaborative procurement. Variations in financial thresholds and tender process was confirmed as a potential barrier to collaboration in the earlier CSO study.
- Retrospective audit recommended with spot checks rather than lower thresholds for high volumes of transactions. Typical transaction volumes in the £10k-£150k invoice value band can reach 2500+ per annum which would have a high bureaucratic cost associated with it. Adoption of the EU thresholds supported by spot checks on lower values would therefore be recommended.
- The EU directives were designed to open up markets to competition where none existed (e.g. Italy). Unfortunately, they have created a significant bureaucratic workload for public bodies in the UK. European contract regulations can be confusing and expert advice should be taken throughout the process to limit the chance of a legal challenge. Further information can be found on the OGC website <http://www.ogc.gov.uk/> in the procurement section.

Table: Recommended Financial Thresholds with corresponding best practice

Total Value	Award Procedure	Shortlisting	Documentation/Audit Requirement	Member Involvement
Up to £5000	One oral Quotation	<i>Officer</i>	Retain evidence.	-
£5000 to £50,000	Three oral Quotations , only the selected quotation to be confirmed in writing (Officers should create a contemporaneous note of all quotations received, for audit purposes).	<i>Officer</i>	Invitations to quote and <i>Quotations</i> received, and a contemporaneous note of any oral quotations received; a written record; - of any exemptions and reasons for it - of the reason if the lowest price is not accepted - of award criteria other than price	
£50,000 to £144,371	Three valid written Quotations received	<i>Officer and Line Manager</i>	Written records of communications with the successful contractor. Spot checks will be undertaken to validate documentation and	-

Total Value	Award Procedure	Shortlisting	Documentation/Audit Requirement	Member Involvement
<p>£144,371 – EC Threshold for goods and services</p>	<p>Invitation to Tender by advertisement to be at least three Candidates. EC Procedure must be followed. Consult the procurement helpline.</p>	<p><i>Officer and Line Manager</i></p>	<ul style="list-style-type: none"> - the steps prior to purchase - the method for obtaining bids - any <i>Contracting Decision</i> and the reasons for it; - any exemption together with the reasons for it; - the <i>Award Criteria</i> (including those other than price) and the evaluation of tenders against these criteria; - tender documents sent to and received from <i>Candidates</i>; - pre-tender market research; - clarification and post-tender negotiation (to include minutes of meetings); - the contract documents; - post-contract evaluation and monitoring; - and written records of communications with <i>Candidates</i> and with the successful contractor throughout the period of the contract. <p>Spot checks will be undertaken to validate documentation and compliance.</p>	-
<p>£144,371 to £500,000</p>	<p>Normally the EC Procedure must be followed. Consult the Procurement Helpline.</p>	<p><i>Officer, Line Manager and Financial Officer</i></p>		<p>Inform relevant <i>Cabinet Member</i> of intended <i>Contract</i> award and of intended <i>Contractor(s)</i> prior to <i>Contract</i> signature.</p>
<p>Above £500,000</p>	<p>Normally the EC Procedure must be followed as a minimum, consult the Procurement helpline or Head of Procurement</p>	<p>As a minimum, <i>Officer, Line Manager and Financial Officer.</i></p> <p>Major contracts may require Senior Officer / Member involvement in shortlisting process</p>		<p>As a minimum report to Cabinet prior to contract signature.</p> <p>Major and sensitive contracts may require substantial Member involvement from the earliest stages.</p>

2.6 LEGISLATION

2.6.1 GENERAL COMMENTS

It is important to note that at no point should CSO's be in breach of UK or EU legislation, irrespective of local needs or objectives. The procurement approach outlined in UK law is based around the EU treaty and the principles contained within the EU directives.

The existing supplies, services and works directives will be replaced by one simplified directive. This new consolidated directive (2004/18/EC) was adopted on 31st March 2004 and introduced into UK at the end of January 2006. There are a number of new processes and requirements within the new directive and the OGC procurement website has guides and training modules to support authorities.

All references to the old directives in the CSO documents should be replaced. To meet the requirements of the new directive, there are new OJEU forms, which were released by the EU Publications Office in late 2005.

It is important to note that the principles of non-discrimination and transparency outlined in the EU Treaty apply to all contracts, not just those over the EU thresholds.

While the risk of a legal challenge is low, the new directive explicitly requires authorities to consider mediation processes and outline the court in which any case would be settled. These areas are key sections in the new OJEU forms and this would suggest that challenge of decisions from the supply base is being encouraged. This is backed up by the Alcatel ruling which requires authorities to notify unsuccessful suppliers of their intention to award a contract and leave a reasonable period for aggrieved suppliers to mount a legal challenge. There is limited case law to see how this will be applied in the UK but CSO's need to show a compliant process and all authorities should establish a robust audit trail for all contracts.

2.6.2 POTENTIAL ISSUES

- Supply base perceive inconsistency / flouting of rules.
- There is the risk of legal challenge from an aggrieved supplier. Freedom of information has enabled increased visibility of process and decision making.

2.6.3 RECOMMENDATIONS/BEST PRACTICE GUIDANCE

- Ensure that CSO's reflect all changes in the procurement directives including the newly available OJEU 2006 procedures. Train up a key person(s) and ensure they review all EU procurement legislation requirements.
- Ensure that CSO's reflect all changes in Local Government legislation including the **new charging and trading powers** included in the Local Government Act 2003. The LGA describes this legislation as "promoting new forms of social entrepreneurship, led by local councils, often in partnership with the private and third sectors". One of the most significant changes is that local authorities who are in the top 3 categories for CPA can now trade and make a profit through joint venture companies. The new trading powers are likely to have the following impact:
 - a) Local authorities may be able to trade in their expertise in providing services to other organisations (in addition to other local authorities which would be covered

by the 1970 Act).

- b) Local authorities may be able to trade in surplus goods, works or services arising from their functions.
 - c) Local authorities may use these new powers to enter into joint ventures with other partners to trade.
 - d) Local authorities may use the new powers to start up social enterprises either by themselves or with other public and voluntary sector groups. The development by the DTI of the Community Interest Company may assist in this regard.
 - e) Other than in respect of joint ventures for a commercial purpose, the new powers will not have a significant impact upon the extension of partnering activities of local authorities.
- Establish a robust audit trail.

2.7 WAIVER OF CONTRACT STANDING ORDERS

2.7.1 GENERAL COMMENTS

Waiver of Contract Standing Orders should only be occurring in exceptional circumstances and should not be encouraged. If waivers are becoming more common then an investigation needs to be made as to the circumstances, as it may be that the CSO's are no longer fit for purpose and require updating.

2.7.2 POTENTIAL ISSUES

- Waivers should not be utilised for reasons of poor planning. It should not be the case that a contract is due to expire and has not been properly planned for. Appropriate tender lead cycles need to be factored into the planning process to avoid avoidance of best practice procedures. Please note: the LCE Contracts Register Service will e-mail the contract owner automatically six months before it is due to expire.

2.7.3 RECOMMENDATIONS/BEST PRACTICE GUIDANCE

- Waivers as a rule should only be occurring in unforeseen or exceptional circumstances. Acceptable circumstances where waivers may occur may include:
 1. There is an emergency requirement which was unforeseen.
 2. The procurement is for a good or service where competition is impracticable and it is not in the interests of the council to pursue a competitive tender. An example may include where the council has purchased IBM Hardware and is required to undertake an IBM proprietary software package to be utilised on the hardware.
 3. There are exceptional circumstances where it is genuinely not in the interests of the council to adhere to the CSO's. Exceptional circumstances may include where a supplier unexpectedly goes out of business or there is a terrorist attack.
- All waivers need to properly documented and an audit trail provided for the circumstances and persons involved, including full explanation and sign off.

2.7.4 SAMPLE TEXT

WAIVER OF CONTRACT STANDING ORDERS – SAMPLE TEXT

1. A waiver may be agreed by the appropriate person if they are satisfied after considering a written report by the appropriate officer that the waiver is justified because:
 - a) the nature of the market for the works to be carried out or the goods or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of Contract Standing Orders is justifiable; or
 - b) the contract is for works, goods or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or
 - c) the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or English law); or
 - d) it is in the Council's overall interest; or
 - e) there are other circumstances which are genuinely exceptional.
2. A record of the decision approving a waiver and the reasons for it must be kept and an entry made in the appropriate register.

Source: London Borough of Haringey CSO's – Mar 2005

2.8 VARIATIONS AND EXTENSIONS

2.8.1 GENERAL COMMENTS

A **robust change control process** needs to be in place for any contract variations and changes in scope. It is essential that the contract reflects the scope and engagement arrangements with a given supplier as these can change over time. A nominated owner for the contract needs to be defined with responsibilities that would include contract maintenance and monitoring.

Extensions should only be occurring when intended and if they are in the best interests of the council to deploy. For example where significant penalty costs may be invoked or where it is particularly advantageous to award the contract to the incumbent supplier (reasons need to be documented).

2.8.2 POTENTIAL ISSUES

- Lack of planning is not a valid reason for an extension. Appropriate tender lead times need to be understood.
- A contract is not properly maintained and changes in scope and supplier engagement are not suitably reflected in the legal contract documentation, presenting a risk to the council.

2.8.3 RECOMMENDATIONS/BEST PRACTICE GUIDANCE

- A robust change control process needs to be in place for variations.
- All variations and extensions need to be properly documented and an audit trail provided as a point of best practice.
- A positive working relationship with key suppliers is recommended as this will ensure effective contract maintenance, as well as enhancing supplier performance.
- Version control of contracts should be maintained ideally in a content management database

which is held centrally to avoid paper copies of contracts being displaced across the council.

- Nominated Contract Owners and/or Supplier Relationship managers need to be assigned to ensure that any variations and extensions are handled appropriately and the detailed understanding of the contract is not lost.

2.8.4 SAMPLE TEXT

VARIATIONS AND EXTENSIONS – SAMPLE TEXT

13.01. Subject to any statutory restrictions and compliance with Financial Regulations a Director may authorise the following extensions and variations to an existing contract:

(a) Either:

(i) an extension for a particular period provided for within the terms of the contract (but subject to satisfactory outcomes of contract monitoring, such information having been provided to the relevant Executive Member);

(ii) or a single extension of the contract by up to six months, or half the contract term (whichever is less); and

(b) any other variation, and if relevant a consequent change in price, determined in accordance with the contract terms.

13.02. In any other circumstances the Executive may vary or extend a contract providing that to do so is consistent with the provisions of Financial Regulations.

Source: London Borough of Haringey CSO's – Mar 2005

2.9 CONTRACT TYPES AND FRAMEWORK ARRANGEMENTS

2.9.1 GENERAL COMMENTS

Selecting the right contract type for the situation is essential for ensuring successful supplier engagement and achievement of best value objectives. A sound understanding of the context and category being procured is required to ensure that the right contract type is deployed, as well as the quality of the actual contract itself. Social care for example tend to utilise block contract arrangements at pre-agreed pricing schedules.

There are six types of contracts in existence which are listed as follows:

1. **One Off Contracts.** These are contracts to meet a specific need and will generally be short-term contracts to supply goods and services to meet an individual requirement e.g. the supply of specialist scientific equipment for the Trading Standards Service or the supply of consultancy services for a particular project. These contracts are sometimes referred to as "Spot" contracts
2. **Renewable or "period" Contracts.** These are contracts for services required on a regular basis and are generally let over a longer period of time (1-5 years) and will be monitored on a regular basis e.g. building cleaning, grounds maintenance.
3. **Framework Arrangements – single authority.** This is an arrangement where the terms and conditions (including pricing methodology where possible) are agreed with

the supplier(s) of goods and/or services, and which allows prices to be obtained and goods to be acquired without the need to go through another formal tendering process. The suppliers are pre-vetted. The length of such arrangements will usually be 3 years with a disclosed option to extend for a further specified period. Examples include stationery and furniture. This type of Framework Arrangement is used for a single authority.

4. **Framework Arrangements – multiple authority.** This is an arrangement where the terms and conditions (including pricing methodology where possible) are agreed with the supplier(s) of goods and/or services, and which allows prices to be obtained and goods to be acquired without the need to go through another formal tendering process. The suppliers are pre-vetted. The length of such arrangements will usually be 3 years with a disclosed option to extend for a further specified period. This type of Framework Arrangement can be used for multiple authorities.
5. **Partnership Arrangements – including PFI and PPP.** This is where the Authority seeks to develop a relationship with a supplier based on partnership principles (as distinct from a formal partnership) with a supplier thereby sharing the costs and risks involved. For example, civil engineering works and individual building schemes.
6. **Call-Off Contracts.** A call-off contract is used for the supply of a specific/known quantity (a minimum and maximum range can be specified) of goods or services over a given time period, subject to the prices, specifications and terms and conditions agreed. Delivery will be made either to a delivery schedule built into the call-off contract, or more usually by separate 'call-off' orders placed against the contract. In essence, a call-off contract is the same as a framework agreement except that the call-off contract is a legally binding contract with the supplier. An example would be a "Block" contract in the social care environment.

The use of framework or consortium arrangements is on the increase and provision in the CSO's is therefore recommended to accommodate specifically for these and all types of contracts.

2.9.2 POTENTIAL ISSUES

- Care needs to be taken when utilising existing frameworks to ensure that they are appropriate and fit for purpose for the authorities needs. It is not the right reason to adopt a framework arrangement to avoid the tender cycle. It needs to be selected on the merits that it offers.

2.9.3 RECOMMENDATIONS/BEST PRACTICE GUIDANCE

- Care needs to be taken in the type of contract adopted so that it is appropriate for the circumstances. The Strategic Procurement Unit should be on hand to provide specialist procurement advice on contract types as required.
- It is worth adopting the generic OJEU wording on framework contracts so that other councils can potentially join the contract in future.
- Utilising existing framework arrangements can significantly reduce tender cycle times. Successful Consortium such as the London Contract Supply Group (LCSG) offers a multitude of framework contracts for various products and services.
- Where there is more than one supplier, it is possible to undertake mini-competitions within a

framework. This allows the awarding authority to provide a clearer scope of the requirement which can lead to better value being achieved.

- Undertaking research on existing frameworks can also support more efficient tendering as well as providing a useful cross-check on scope and price benchmark.
- Partnership arrangements can offer significant cost reduction opportunities through demand aggregation and shared scope. They do however, tend to be more complicated to implement and typically involve longer tender cycle times.

2.9.4 SAMPLE TEXT

FRAMEWORK ARRANGEMENTS – SAMPLE TEXT

Before promoting the procurement of a new or joining a pre-existing framework or consortium arrangement, the Relevant Chief Officer must be satisfied that such an approach represents the most economically advantageous solution for a service work, supply or utility provision and with regard to the Relevant EU Rules on the use of such arrangements.

Before procuring or entering into a framework or consortium arrangement, the Relevant Chief Officer shall be satisfied that:

- (a) the term of the arrangement shall be or is for a period of no longer than four years duration;
- (b) the terms and conditions of the arrangement do not compromise the Council's contractual requirements in Standing Order 111;
- (c) the parties to the arrangement are recognised public bodies or providers from the private sector as approved by the Contracting Committee;
- (d) full, open and proper competition in respect of the creation of the framework or consortium arrangement has taken or will take place in accordance with the Relevant EU Rules and/or Relevant Standing Orders.

Source: London Borough of Redbridge CSO's – June 2005

2.10 USE OF GOVERNMENT CATALOGUES

2.10.1 GENERAL COMMENTS

Government catalogues can be a useful mechanism in procurement as they provide a shortlist of suppliers by category, which have been pre-selected on the basis of a number of quality criteria. If utilised correctly government catalogues such as S-CAT and G-CAT can provide a shortlist of suppliers and can significantly speed up tender cycle times. The pre-selection activity to gain access to the government catalogue should also reduce the risks of engaging with unknown suppliers.

S-CAT, G-CAT and L-CAT are soon to be superseded by CATALIST which is due to be launched in November 2006. A smaller number of suppliers are expected to be successfully listed for a refreshed set of categories.

2.10.2 POTENTIAL ISSUES

- One size does not necessarily fit all. They are not always the best deal. Some of the rates or prices quoted on the catalogues appear quite high.
- Cannot be relied upon in isolation as there may be more appropriate suppliers for more specific needs and requirements. More useful in more generic procurement needs such as IT Consultancy or Legal support.

2.10.3 RECOMMENDATIONS/BEST PRACTICE GUIDANCE

- If used wisely catalogues can be used with beneficial effect to reduce tender cycle times and attain quality assurances.
- It is useful for a appointed officer in the Strategic Procurement Unit be familiar with the types of Government catalogues on offer and their usage.

2.10.4 SAMPLE TEXT

GOVERNMENT CATALOGUES – SAMPLE TEXT

Where the Contracting Committee or Relevant Chief Officer so decide, the Central Government Catalogues may be used and orders issued in accordance with the relevant catalogue procedure as follows:

Where utilising the S-Cat procedure the Relevant Chief Officer shall obtain:

- for any procurement of a Contract with a Net Value of up to £50,000 at least one (1) quotation from those Organisations appearing on such list; or
- for any procurement of a Contract with a Net Value of £50,001 or more a minimum of three (3) quotations from those Organisations appearing on such list and a “mini-tendering exercise” as described in the S-Cat procedure shall be conducted.
- the Relevant Chief Officer must record in writing the process used to determine the number of quotations obtained and the reason for selecting Organisations to quote. Such records shall be maintained for a minimum period of six (6) years from the date of recording.

Source: London Borough of Redbridge – Mar 2005

2.11 EPROCUREMENT

2.11.1 GENERAL COMMENTS

eProcurement can have a very broad definition and is essentially the application of electronic systems to all aspects of procurement. Given the push towards eProcurement adoption and usage, the CSO's should support this type of working as it does challenge the traditional processes and can reduce administrative costs and timelines.

eProcurement therefore includes the following systems:

1. **eAuctions.** eAuctions, or 'dynamic trade', are web-based online events that enable efficient, open and transparent bidding between pre-qualified suppliers competing either on lowest price or most economically advantageous tender as part of a full tendering process. These are becoming an increasingly popular tool to drive down prices and rapidly reduce tender cycles especially in the areas of Telecomms and Agency staff. Technology platforms include Trading Partners, Moai and all the major ERP vendors.
2. **Marketplaces.** These are electronic markets where buyers and sellers can interact and transact on-line. Examples include the London Marketplace, IdEA Marketplace and UK Procure. Their usage has been hindered by supplier take-up.
3. **eSourcing.** Systems that support the sourcing of suppliers prior to any tender evaluation activity.
4. **pCards.** Purchasing cards (also known as p-cards or procurement cards) are used to simplify purchasing, payment and monitoring. P-cards operate in much the same way as a personal credit card which is billed monthly. The Government Procurement Card (GPC) is an example of a p-card scheme offered by central government.
5. **eTendering.** Systems that support the tender process typically with workflow and event driven triggers.
6. **Purchase to Pay systems.** Systems that support the end-to-end requisition to payment cycle which are now typically web based and with automated workflow. Examples include Cedar, Agresso, Oracle and SAP.
7. **Contract Management.** Systems that support the creation, maintenance, monitoring and closure of contracts.

2.11.2 POTENTIAL ISSUES

- A lot of confusion exists around which eProcurement tool to utilise and why.
- A lot of scepticism exists in the benefits that eProcurement can offer. These systems can be expensive to buy and implement and rarely take people out of the process.
- One size doesn't fit all. Often a best of breed approach is recommended with a suite of tools being deployed.
- The process must be re-engineered to a new electronic process where the corresponding paper process is taken away. Otherwise there is the risk of multiple choice and processes in place.

2.11.3 RECOMMENDATIONS/BEST PRACTICE GUIDANCE

- When used appropriately eProcurement can deliver significant cost savings and support more efficient procurement working practices. eAuctions have proven particularly successful at achieving price visibility and reductions in margins. pCards are also very useful for low value/high volume transactions.
- An eProcurement strategy should be drawn up and adopted with sensible tool selection and roll-out timeframes.
- The tools deployed don't need to cost millions. Often the best tools are bespoke web-based tools that are relatively simple and cheap to implement. Web based contract registers are a good example of this.

- Often the real value in eProcurement comes when the systems are fully integrated with other back office systems. Such as when the contract management system is integrated with the purchase to pay system.
- Process re-engineering and business change is essential when implementing eProcurement successfully, as without the business change the systems will simply reflect inefficient paper-based process.

2.11.4 SAMPLE TEXT

ETENDERING – SAMPLE TEXT

At the discretion of the Relevant Chief Officer, requests for quotations and invitations to tender may be either issued and/or received by electronic means. In circumstances where the Relevant Chief Officer elects to either issue and/or receive tenders by electronic means the following conditions shall apply: -:

The Relevant Chief Officer shall ensure that evidence that the transmission was successfully completed is obtained and recorded;

Electronic tenders received are kept in a separate secure folder under the control of the Relevant Chief Officer or with prior agreement and facilities being made available to the Borough Solicitor and Secretary;

Source: London Borough of Redbridge – Mar 2005

2.12 POST CONTRACT MONITORING AND EVALUATION

2.12.1 GENERAL COMMENTS

Contract monitoring and evaluation is often found lacking in local authorities. Contract ownership is often not formalised with no clear engagement with suppliers and monitoring procedures agreed up-front. This is an area of enormous opportunity as improved supplier performance can be directly linked to how suppliers are engaged with post the contract award. Suppliers that have their performance measured are much more likely to offer higher levels of service and contract compliance than those that are not.

There is also the need for risk management and contract monitoring plays a key part in ensuring that risk exposure is kept to a minimum. Clear ownership is therefore required with regular reviews and mitigating actions agreed to ensure that risk levels are managed at acceptable levels.

2.12.2 POTENTIAL ISSUES

- No-one 'owns' the contract. Monitoring is forgotten about once the contract is awarded.
- A lack of contract monitoring can result in scope creep, poor performance and no incentive for continuous improvement.

- Lack of resource is often cited as the issue that prevents contract management.
- The contracts are scattered around the Council and there is no version control. Often the best place to start locating a contract is to ask the supplier for a copy.

2.12.3 RECOMMENDATIONS/BEST PRACTICE GUIDANCE

- Visibility of contracts is essential as a first step and a contract register tool is recommended to support this. The London Centre of Excellence has recently adopted a pan-London contract register tool used by the Procurement Agency for Essex and piloted by the West London Alliance enable authorities to share information on their contracts. For more information please contact Esther Thomas at the London Centre of Excellence esther.thomas@alg.gov.uk .
- A nominated contract owner needs to be established for key contracts. This may require training so that the owner is clear on their roles and responsibilities and the details of the contract.
- During the life of the contract the appointed Contract Owner must monitor in respect of:
 - Performance;
 - Compliance with specification and contract;
 - Cost;
 - any Best Value requirements; and
 - User satisfaction and risk management.

3. CONCLUSIONS AND NEXT STEPS

3.1 NEXT STEPS

Most CSO's reviewed across London would benefit from a refresh of their Contract Standing Orders to ensure that they support the current commercial environment that authorities are facing as well as establishing a more consistent pan-London best practice model.

This report hopes to provide a useful starting point and sample text to enable that process. Please be aware that an update of CSO's can take up to six months to implement due to the consultation required and the cycles to secure approval from Cabinet and the Executive Board. A business change and communication activity is then required to launch the new CSO's once the rules and guidance have been approved.

The expected implementation steps to refresh your authorities' CSO's are as follows:

1. Establish working project team and project lead
2. Establish project plan, key milestones, scope and deliverables.
3. Establish consultation group and make contact.
4. Undertake working sessions to agree text and guidance notes.
5. Test draft on wider consultation group.
6. Complete draft and send to Cabinet and/or Executive for approval.
7. Establish launch plan to include communication and training.
8. Updated CSO's are formally launched and are made publicly available.

Further information and sample CSO documentation is available from the London Centre of Excellence.

ACKNOWLEDGEMENTS

We should like to thank those authorities who have consented for us to use their model clauses in this document. This consent does not necessarily signify endorsement of this guidance.

APPENDIX A – REVIEW DOCUMENTS

The following documents were submitted and formed the core reference for the research project.

Authority	Document title	Pages
City of Westminster	Procurement Code (summary report)	12
London Borough of Bromley	Code of Practice for Procurement	84
London Borough of Camden	Procurement Code of Practice	27
London Borough of Enfield	Contract Procedure Rules	13
London Borough of Hammersmith & Fulham	The Contracts Code	270
London Borough of Hackney	Contract Regulations	35
London Borough of Harrow	Contract Procedure Rules	27
London Borough of Havering	Contract Procedures Rules	55
London Borough of Islington	Procurement Code	53
Royal Borough of Kingston upon Thames	Contract Standing Orders	13
London Borough of Newham	Procurement code (short version)	14
London Borough of Redbridge	Contract Standing Orders	21
London Borough of Southwark	Contract Standing Orders	13
London Borough of Sutton	Contract Standing Orders	10
London Borough of Tower Hamlets	Procurement Procedures	31
London Borough of Waltham Forest	Contracts Procedures Rules	10
London Borough of Wandsworth	Code of Practice	42
London Fire & Emergency Planning Authority	Contract Standing Orders	61

APPENDIX B – SAMPLE CSO DOCUMENTATION

With special thanks to the following authorities for making their CSO documentation available for sample:

- London Borough of Haringey
- London Borough of Redbridge
- Northamptonshire County Council

Full copies of the sample CSO documentation utilised in this report is accessible through the LCE by contacting Esther Thomas.

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