1 Executive Summary

1.1 As a response to concerns that the existing required contract award criteria, as set out in the Council’s Contract Standing Orders (CSOs), does not always lead to a satisfactory outcome within a tender process, a review has been undertaken to identify and recommend an alternative approach that is relative and proportionate to any public contract to be awarded, and appropriate for the differing types of goods and services the Council procures.

1.2 The CSOs currently state tenders will be evaluated against predetermined best price-quality ratio of 70% cost and 30% quality weighting to identify the most economically advantageous tender. It is proposed within this report to implement an alternative price-quality ratio to be applied to contracts to be awarded within the Council.

1.3 A ‘framework’ approach based on the Kraljic Matrix (1983), recognised by the
Chartered Institute of Purchasing and Supply, is proposed that segments the Council’s requirements based on a range of factors including business criticality, market competition and financial impact.

1.4 Differing price/quality splits have been recommended within each segment to support delivery of value for money to secure the best mix of quality and price for the Council, alongside delivery of the Council’s Community Wealth Building Strategy, the Council’s wider Corporate Priorities, Principles and KPIs as set out in the Corporate Plan, and, as required by the Public Contracts Regulations 2015 (PCR), the award of a most economically advantageous tender (MEAT).

1.5 A review of the new approach is also proposed to incorporate any lessons learned.

1.6 This report is to be read in conjunction with the Council’s proposed Community Wealth Building Strategy.

2 Recommendations

2.1 For the reasons set out in the report, Cabinet recommends for Council to approve:

2.1.1 The replacement of the current 70/30 price/quality split within the Contract Standing Orders (CSOs) to a more strategic and proportionate approach ensuring adequate scrutiny is undertaken in selecting the appropriate price/quality mix in line with the framework for future procurement activities.

2.2 As a result, Council is also recommended to agree that the current CSO wording relating to the required price-quality split, reproduced in section 4.14 below, is replaced with that contained in section 4.15 below.

3 Background

3.1 The existing Contract Standing Orders (CSOs) Rule 22.3 states that (aside from some limited exceptions):

Tenders will be evaluated against pre-determined best price-quality ratio of 70% cost and 30% quality weightings

3.2 Whilst this ratio is clearly suitable for a significant number of the council’s tenders, it is recognised it does not always provide sufficient flexibility for complex (or indeed very simple) requirements and does not take sufficient
account of market conditions that will affect supply

4 Key Considerations & Proposals

4.1 Contracting authorities have flexibility of choice in selecting their price and quality split evaluation model but in accordance with the Public Contracts Regulations 2015, Regulation 67, contracting authorities shall base the award of public contracts on the most economically advantageous tender assessed from the point of view of the contracting authority.

4.2 For each procurement undertaken, every award criterion used must be linked to the subject matter of the contract where they relate to the works, supplies or services to be provided under that contract in any respect and at any stage of their life cycle.

4.3 Through the method to be used, the Council must comply with the general principles of equal treatment, transparency, non-discrimination, relevance and proportionality.

4.4 The proposed framework will ensure the weightings attributed to cost and quality are be based on a number of factors to be considered which include:

- Level of competition in the market: the number of alternative sources of supply that exist.
- Switching costs: the ease with which contracts can be moved from one supplier to another
- Impact on the organisation of supplier failure
- The complexity of specifications
- Financial impact on the authority: the extent to which the size of the spend in question may offer commercial/procurement opportunities for the Council (and support its savings agenda) or conversely an adverse financial impact if the contract does not delivery value for money
- The extent to which the requirements are strategic or support the Council’s Priorities

4.5 Adopting a framework approach (based on Kraljic supplier segmentation matrix), as described below will allow these considerations to be grouped into four categories, each with suggested price/quality ratios to inform decision making.

4.6 Directorates, whilst working alongside Procurement and Finance teams, will clearly identify, define and recommend their proposed award criteria by
addressing the best mix of quality and price in line with the defined categories below, setting this out within pre-procurement decision reports.

4.7 **Routine – low complexity, low spend, well defined specification**: The first category can be classed as ‘routine’. Generally this would focus on the purchase of standardised goods or commodities, or where the authority can clearly define its specification by reference to well-defined standards, and the number of suppliers in the market will generate reasonable competition. This will be characterised by simple/low complexity requirements with relatively low spend, where there are many alternatives/sources of supply and demand can easily be switched from one to another. Typical areas of spend will include for example; courier services, stationery, general maintenance suppliers, small works, printing, cleaning materials etc. Price and quality ratios in this category would be expected to be 80 price and 20 quality. The risk in this scenario would be a ‘race to the bottom’ on price and receipt of abnormally low tenders. To mitigate this, ‘pass/fail’ questions may be used to ensure bidders are required to meet a minimum threshold and standard in the quality criteria, therefore allowing poor quality bids to be rejected as non-compliant.

4.8 **Leverage - large volumes, high spend, quality scrutiny**: The second category encompasses higher spend areas within competitive markets ‘leverage’ where there is an opportunity to drive buying power through aggregation of volumes (perhaps with other authorities, consortia or via frameworks). Typical areas of spend will include IT equipment, vehicles and temporary staff. However, at the same time, the increased financial commitment requires increased scrutiny of quality to ensure effective delivery of the contract. This is where a 70 price and 30 quality split would be appropriate.

4.9 **Strategic - high spend, complex, quality is key, key residential services**: The third ‘strategic’ category comprises of those goods and services that are absolutely crucial to the organisation and which could have a fundamental impact if the provider was to fail. These are typically high spend with few sources of supply and specifications can be complex. They will include areas such as care provision, housing provision, waste management, highways and larger capital works. Evaluation weightings are likely to range between 60 price and 40 quality, a more even 50 price and 50 quality, and 40 price and 60 quality, to allow for the importance weighted towards quality slightly more when service quality is a key factor and spend is high.

4.10 **Bottleneck – high risk, complex, low spend, uncertainty, quality is paramount**: The last category ‘bottleneck’, which generally considers the greater the level of risk, complexity, uncertainty or potential for innovation, the higher the quality weightings, should be. This may be where the authority has a clear budget, and needs to test what the market can deliver. This could include goods and services that, although spend may be low, are vital to the Council and which might be difficult to obtain, potentially due to a lack of suitable providers. As examples, this may include specialist care provision and specialist
advisory services. Depending on the criticality & degree of specialisation, evaluation weightings are likely to range from 30 price and 70 quality and 25 price and 75 quality to allow for the importance weighted towards quality when service quality is paramount. To prevent a risk of unaffordable outcomes in the higher quality weightings, the authority can set a financial budget that cannot be exceeded (supported by sound market intelligence).

4.11 The table below provides a summary of the segmentation framework:

*Table 1: Price/quality evaluation framework (with indicative Price/Quality splits by category)*

![Diagram](image)

4.12 It is proposed that this model is built into the existing procurement governance and gateway process. It will provide guidance for the service lead and procurement to jointly recommend the appropriate weighting and the approval will be in line with the current scheme of delegation & CSO thresholds.

4.13 Appropriate training and tools will be developed for the Procurement team and service staff which will be made available within the Council’s e-learning suite ‘online’. These will provide clear guidance on what denotes high versus low spend; high versus low risk etc. to aid decision making.

4.14 The current CSOs stipulate that:

>‘22.3 Tenders will be evaluated against pre-determined best price-quality ratio of 70% cost and 30% quality weighting.'
22.4 A contract can only be awarded other than on 70% cost and 30% quality, if one of the following exemptions apply:

22.4.1 FRAMEWORK: Where it is considered that the best procurement route is through an existing framework agreement and that does not allow tender evaluation on a 70/30 basis.
22.4.2 RINGFENCED GRANT: Where the procurement will be funded from a specific ring-fenced grant where any underspend would be lost to the Council and a higher quality threshold would enable the grant to be fully spent, i.e. where the Council can afford to purchase higher quality.
22.4.3 INNOVATION: Where a service is a completely new type to the market and the model of delivery is not seen elsewhere in the UK.

PROFESSIONAL ADVICE: Procuring high-level specialist advice.

4.15 It is proposed to remove these clauses and replace them with the following wording:

‘22.3 The price-quality ratio against which each tender will be evaluated will be determined in accordance with the current price-quality evaluation framework and associated guidance.

22.4 Any recommendation that departs from the framework guidance shall be treated as a waiver except:

22.4.1 where the recommended procurement route is through a framework agreement whereby the contract shall be awarded to the tenderer that has submitted the best tender on the basis of the award criteria set out in the procurement documents for the framework agreement.’

4.16 In addition, it is also proposed that for strategic/high risk procurements, dummy scores are run through the proposed evaluation model in advance of the procurement to ensure it will deliver an appropriate result (and this forms part of the rationale at the governance gateway).

4.17 It is recognised the proposed framework does not specifically address individual associated social value weightings within the quality weighting. This currently forms a separate piece of work underway within the procurement department to develop a social value toolkit and will include guidance on appropriate Social Value weightings to be included (with measures that reflect the Community Wealth Building Priority, in particular). This is the subject of another proposed paper under development.

5 Policy Implications & Corporate Priorities

5.1 This report supports a number of the Mayoral Priorities in the Corporate Plan:
5.1.1 *Priority 3: Community Wealth Building Priority*, by proposing a framework that ensures the evaluation weighting is relevant and proportionate to the particular procurement being undertaken.

5.1.2 *Priority 6: An efficient and effective Council*, by ensuring that the appropriate mix of price and quality is chosen in our procurements to deliver value for money (the most economically advantageous tender)

5.2 The existing CSOs are currently under review and a revised version will, subject to the decision of Full Council, be published later this year; this will incorporate the recommendations in this paper, amongst other changes.

6 Alternatives considered

6.1 N/A

7 Consultation

7.1 **Name of Lead Members consulted:**
Councillor Terence Paul, Cabinet Member for Finance and Corporate Services
Councillor John Gray, Deputy Mayor (Statutory) and Cabinet Member Housing Services

8 Implications

8.1 Legal Implications

8.1.1 The recommendation in this report is for Full Council to approve a change to the Contract Standing Orders. That is to adopt a modification to move to a more strategic approach to setting the criteria to identify the Most Economic Advantageous Tenderer depending on the type of procurement being sought while taking into account the market on a case by case basis.

8.1.2 The Council is able to adopt the suggested framework which meets the requirement of the Public Contracts Regulations 2015 and the Treaty on the Functioning of the European Union 1957 principles of acting fairly, transparently and in a non-discriminatory way.
8.2 Equalities Implications

8.2.1 Newham Council spend each year on buying goods, works or services from other providers across a wide sector and whilst doing so, must pay due regard to meeting the duties outlined within the Equality Act 2010 and specifically the Public Sector Equality Duty. This spending power will be used as a means of advancing equality and eliminating unlawful discrimination by building community wealth through greater weighting on contract quality.

8.2.2 For routine contracts of low complexity, low spend and a well-defined specification which use a pass or fail criteria to ensure bidders meet a minimum threshold, equality, diversity and inclusion considerations (proportionate to the spend) should be taken into account. Current standard selection questionnaires include questions for declaring breeches of social obligation:

‘In the last three years, where the organisation has had a complaint upheld following an investigation by the Equality and Human Rights Commission or its predecessors (or a comparable body in any jurisdiction other than the UK), on grounds of alleged unlawful discrimination.

‘In the last three years, where any finding of unlawful discrimination has been made against the organisation by an Employment Tribunal, an Employment Appeal Tribunal or any other court (or incomparable proceedings in any jurisdiction other than the UK)’.

These questions provide assurance that breaches which have been investigated and taken to tribunal are disclosed with future mitigating actions in place. For larger spend, more complex contracts, with opportunities to build community wealth the Council will benefit from applying further scrutiny and incorporating questions to evidence the outcome of bidders’ commitment to equality, diversity and inclusion:

8.2.3 Higher spend areas within competitive markets ‘leverage’ where there is an opportunity to drive buying power through aggregation of volumes e.g. IT equipment, vehicles and temporary staff may involve contractors’ staff interacting with the Council’s staff and residents. The Council requires further assurance that companies are supporting the Council to meet its public sector equality duty, including the provision of evidence and meeting KPIs.

8.2.4 Strategic - high spend; complex, quality contracts provide the opportunity to deliver wider community benefits, such as, developing work placements and job opportunities for underrepresented groups in the job market- e.g. disabled people. These benefits could be captured within qualitative measures and form part of contract specifications.
8.2.5 High risk, complex, low spend, uncertainty, contracts where quality is paramount might require assurance of a detailed understanding of equality issues relevant to the contract and would form part of the qualitative measures.

8.2.6 All updated policies associated with this proposal will be developed using equality analysis to build in EDI considerations

8.3 Finance Implications

8.3.1 This report proposes changes to the Council’s evaluation framework for the procurement of goods and services. The exact financial consequences of it will therefore only be developed over time as procurement exercises are conducted. However, generally speaking, by placing lesser weighting on price than the current standard 70%, as is envisaged for a number of procurements will tend to lead to contractors placing greater emphasis on the qualitative aspects of their bids and becoming less incentivised to focus on submitting the lowest prices possible. The reverse of course is true for those contracts where an 80/20 evaluation weighting is proposed, but those are generally expected to be lower in value and/or frequency.

8.3.2 The headline consequence of this will be higher prices than the Council might otherwise have procured, but it is important to note the mitigations that will also apply. A greater focus on quality, and less on price, will tend to discourage contractors putting in unreasonably low tenders and seeking subsequently to recover their position by seeking to charge for extras during the lifetime of the contract, so the risk of hidden costs such as these is likely to be reduced. It is also the case that through intelligent commissioning and procurement the Council can still seek to achieve financial savings in its procurement activity, and higher quality services will also tend to have other unquantifiable financial benefits, such as reduced cost of dealing with complaints arising from lower quality work

8.4 Other Implications relevant to this report:

N/A