

# **Procurement Standing Orders**

Rules to be followed when buying on behalf of the council

September 2015

Issue 6

## Version History

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# 1 Introduction

The Procurement Standing Orders set out how the Council authorises and manages spending. This includes all types of goods, works and services, as well as non-permanent workforce such as temporary and agency staff and consultants. We have a responsibility to do this in a transparent way that offers best value to residents.

Anyone who buys on behalf of the Council, including staff, contractors and consultants, are responsible for following these Procurement Standing Orders.

This document looks at public sector tendering and purchasing procedures and the legislative framework that surrounds them.

**Note:** In these Orders, 'You' means anyone who needs to buy from an external supplier.

## 1.1 Key Principles

These Procurement Standing Orders are based on these key principles:

- To get good **value for money** through appropriate market competition for contracts, so that we offer best value for services to our residents.
- To be **transparent** to our residents about how we spend their money.
- To make sure we spend public money **legally and fairly**, and to **protect** us from undue criticism or allegation of wrongdoing.
- To support **sustainability** and **social value** objectives, and our public sector **equality** duty, encouraging local small businesses.

## 1.2 Compliance

All Officers, and any external contractors empowered to form contracts on behalf of the council, must comply with these Orders at all times. If you breach them, you are breaching the council's Constitution and this will lead to disciplinary action.

You must not artificially separate contracts or spending to avoid these orders applying at any level, except insofar as this is necessary to enable small or medium-sized enterprises to compete, whilst delivering best value for money and remaining compliant with the law.

Where there is a difference between current legislation governing procurement and these Orders, the legislation prevails and you must comply with it.

Where these Orders appear to conflict with other council-determined rules the Head of Procurement determines which takes precedence.

The Procurement Service reports breaches of these Orders to the Procurement Review Group (PRG) (see section 3.6.2), which has the option of two courses of action:

**Informal Notice** – Where the non-compliance was as a result of lack of information or beyond your control, the PRG may make recommendations to ensure future compliance.

**Formal Warning** – Where there is evidence of deliberate non-compliance the PRG will advise the Head of Human Resources and appropriate management of a formal breach of your terms and conditions for appropriate action to be taken. Recommendations to ensure future compliance will also be made.

### 1.3 Scope

Apart from the exceptions listed below, these Orders cover all spend with external suppliers regardless of how they are funded (for example, revenue, capital, grants, ring-fenced government money and/or any third party funding).

These Orders do not apply to the following items, which are managed by separate policies:

<b>Exclusion</b>	<b>Relevant Policy/Law</b>
Contracts for the acquisition or lease of land and/or real estate	Managed via Property Services
Contracts for permanent or fixed-term employment	HR/Recruitment Policies
Works or orders placed with utility companies (eg re-routing pipe-work)	This is carried out as part of larger construction contracts
Direct payments to customers following care assessment (for example, payments under Self-Directed Support or Individual Budgets)	Dept of Health Community Care Assessment Guidance 2004
Non-trade mandatory payments to third parties, such as insurance claims, pension payments, payments to public bodies	These are not subject to competition due to their nature
Fees for external auditors	These are determined by the Public Sector Audit Appointments Limited under the Local Audit and Accountability Act 2014
A declared emergency authorised by the Emergency Planning Officer	The Civil Contingencies Act 2004
Awarding of Grants	Managed according to locally agreed Grant process, Corporate Funding Protocol or Grant Procedure Rules

### 1.4 Roles and Responsibilities

The Head of Procurement is responsible for the complete process from procurement through to ordering and paying suppliers (known as 'Procure-to-Pay') across all Services and local systems. Any developments in the design of the process require the approval of the Head of Procurement or authorised delegate.

The Procurement Service is responsible for:

- (a) Providing expert market knowledge to help you find the best supplier to meet specified needs
- (b) Managing all tenders and contract awards over £100,000

- (c) Engaging colleagues from Finance, Legal and HR in all contract strategies and awards
- (d) Developing strategic action plans for each category of spend
- (e) Taking a commercial lead on all strategic or critical contracts and relationships with suppliers
- (f) Ensuring that good practice contract and supplier management is written in to agreements with our strategic and critical suppliers
- (g) Developing our supply chain to deliver performance improvements
- (h) Ensuring transparency over spend, contracts and contract opportunities
- (i) Embedding social value and sustainability across the supply chain
- (j) Ensuring efficient and effective purchasing practices are in place for all staff
- (k) Working with Business Operations to manage a master database on SAP of suppliers

Anyone who buys from suppliers is responsible for:

- (a) Complying with these Orders
- (b) Using existing corporate contracts or select lists of suppliers where in place
- (c) Ensuring there is adequate budget available
- (d) Following the corporate process at the earliest opportunity when you need a new supplier
- (e) Raising and ensuring a purchase order is approved before the requirements are delivered to the Council, regardless of which system is used.
- (f) Ensuring technical specifications meet the defined need and requirements
- (g) Ensuring specifications take into account equality and diversity as well as social value implications, and carrying out Impact Assessments where appropriate (mandatory for service contracts over £50,000 in value).
- (h) Putting in place effective monitoring of the performance and management of contracts

## 1.5 Transparency

This section sets out how we meet our obligations to be transparent in our procurement, and maintain proper accountability to the public and obligations from the Transparency Code of Conduct and Public Contract Regulations 2015.

### 1.5.1 Publication of Contract Opportunities, Spend and Contracts

In accordance with current government requirements we publish details of all spend with suppliers over £500 on our website, as well as spend on purchasing cards. A list of current contracts and grants is also published.

All advertised opportunities for contracts over £25,000 are published via the national Contracts Finder website, as well as our own website. Contracts over the current EU threshold are advertised via the Official Journal of the European Union (OJEU).

### 1.5.2 Freedom of Information

Under the Freedom of Information Act (FOIA) 2000, we have an obligation to publish specific information and to provide information to members of the public upon request. However, the

FOIA enables certain confidential information and commercially sensitive material to be withheld. You must therefore ensure tender information is kept confidential at all stages, especially during tender evaluation and after the contract is awarded. Suppliers must also be given the opportunity to highlight in their tender any information that they would not wish disclosed under FOIA. Requests for information under the FOIA will be dealt with under the usual Council procedures for such requests.

### **1.5.3 Developing Local suppliers**

The council is committed to encouraging businesses in the county to compete for contract opportunities in order to support the development of the local economy. It provides information and support via dedicated websites and through supplier events. For purchases under £100,000 we actively encourage the use of locally-based suppliers where they can offer best value for money.

### **1.5.4 Conflict of Interest**

Our market searches, procurement and purchasing must be carried out free from any conflict of interest to support our transparency objectives. An 'interest' means any consideration or anything of economic value, including future consideration.

Conflicts of interest can arise when someone who is involved in these processes has a close connection with another party who is also involved which may mean they could influence, or be influenced by, the outcome of a buying decision.

Conflicts of interest can arise in the procurement process in a number of ways, including:

- a. Where someone who is actually buying goods or services for the council, or giving budgetary approval for the purchase, has an interest in the supplier's business
- b. Where someone with an involvement in a tender or other sourcing process has an interest in the a potential supplier's business
- c. Where Suppliers bidding for a contract with the council have an interest which could enable them to influence unfairly the outcome of a sourcing process
- d. Where consultants are supporting the council in conducting or developing market searches or project preparation including business case for solutions which could enable them to influence unfairly the outcome of any resultant sourcing process

If you are a council employee you must follow the HR Policy on Conflicts of Interest, ensure all potential conflicts of interest are declared appropriately, and ensure you do not participate in any buying activity where these Conflicts of Interest could arise.

Temporary & agency staff, and other consultants or contractors must abide by the terms of their contract with the council and follow the council's HR policy on Conflicts of Interest and on Equalities and Diversity.

Staff may supply goods, works and services as external suppliers to the council as long as the policy has been followed, and any interests declared and managed at the time a contract is agreed. Staff members who become suppliers must not have access to systems to raise Purchase Orders. There must be demonstrable transparency and fairness in any transactions of this nature.

Suppliers bidding for contracts with the council are required to declare any conflict of interest.

The council may undertake projects involving income generation and the available powers to trade and charge, where potential conflicts of interest may have an impact. These will be referred to the Head of Procurement to agree with the Monitoring Officer an approach that best manages the council's interests.

Conflicts of interest arising from shared service or collaborative working will be also referred in the same way, unless already under the scope of an agreed governance body for that management of the shared service arrangement, who will then be responsible for agreeing an approach that manages the best interests of the parties.

## **2 Finding and contracting with Suppliers**

Whenever it is necessary to enter into a contract, you must take into account the 'aggregate' or total spend forecast. That is, the total amount you expect to spend with a supplier for the duration of the contract. This value determines the approach to be used to find a supplier and put a suitable contract in place. These rules apply to all contracts including works and service concessions.

### **2.1 Deciding when to use a grant or a contract**

A grant is a sum of money given to an individual or organisation for a specific project or service. A grant usually covers only part of the total costs involved in the project or service.

A grant is usually given on the basis that if it is not used for the purposes for which it is given the funder can ask for all or part of the money back and maybe able to take legal action for breach of the terms of the Grant Agreement for sums paid.

The grant process involves an applicant submitting a proposal (or submission) to a potential funder, either on the applicant's own initiative or in response to a Request for Proposal from the funder. A procedure is provided on the intranet, which must be followed to decide if a project or service should be delivered via a grant or by a contract. All grants should incorporate the requirements of the local Compact, as well as consider Social Value.

If, having followed this procedure, your requirement can be delivered through a grant then you must follow the locally agreed grant processes and guidance, available on the intranet.

If, having followed this procedure, your requirement can be delivered through a contract then follow the instructions in section 4 below.

If you are not clear, then contact the Procurement team.

### **2.2 Overview and summary table**

A summary table overleaf sets out these different approaches for each threshold aggregate value, and is followed by more detail of each.

**2.2.1 Summary table – Process for finding new suppliers at each threshold level**

Aggregate value	Purchase Card permitted?	How many quotes are required?	How should you approach the market?	Who leads procurement ?	Should the contract be formally advertised?	What type of contract is required?	Who must approve the contract award?+	Who signs the contract on our behalf? ++	Contract Award Notice needed?	How much time should be allowed to carry out process?
£0 to £14,999	Yes, within individual card transaction/ credit limits	One	Email / Call Supplier. Use a local supplier if they offer best value.	Service Officer	No	Standard Terms (see Council's website)	Budget Holder	Not Required – (Approval of Purchase Order)	No	2 weeks minimum
£15,000 to £99,999	Only in formal emergency cases	Minimum of Three	Request For Quotation should be sent via Business Operations	Business Operations or service officer	No but where advert is placed, this must be via Contracts Finder	Council's Standard Terms, or a specific contract approved by Legal Services	Head of Service or delegated manager	Head of Service or delegated manager	Yes – over £25k on Contracts Finder	6 weeks minimum
£100,000 to £499,999	No	(via tender process)	Issue Tender via Procurement	Procurement	Yes, via Contracts Finder and / or OJEU	Specific contract approved by Legal Services	PRG	Procurement Category Manager and Head of Service **	Yes – over £25k on Contracts Finder or OJEU over EU threshold	3-6 months
£500,000	No	(via	Issue Tender	Procurement	Yes, via	Specific	PRG and	Sealed as a	Yes - OJEU	6-12 months

and over		tender process)	via Procurement		Contracts Finder and/ or OJEU	contract approved by Legal services	either £500,000-£999,999: Lead Member £1million : Cabinet	deed via Legal Services	over EU threshold	minimum depending on complexity of requirement
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**Notes:**

\* Consultancy agreements have separate rules – see Section 3.11 for full details

\*\* Also applies to all Framework Agreements

+ For collaborative contracts see section 3.5

++ For contract extensions see section 7.5



### **3 Buying Principles**

These Buying Principles apply to contracts of all values to ensure that they are made in a fair and open way that delivers best Value for Money.

When a new requirement for goods, services or works is established, it is important to ensure the correct procedure is followed in order to obtain them.

The basic steps for this are as follows:

- Establish what the requirement is (key business needs);
- Ensure a new procurement is the right option – do we need to buy?
- Check that there is no existing contract or framework that is suitable to use for the requirement;
- Check that there is no collaborative arrangement available to use – Surrey, SE7 etc.;
- Looking at the applicable spend table (overleaf), plan what needs to be done;
- Engage with Procurement as early as possible especially where spend is over £100k and/or risk is high.

#### **3.1 Contract Compliance**

Where existing corporate contracts and agreements exist, these should be used as they provide best Value for Money for the council. Ways to identify existing arrangements in place are given in more detail in section 4.1.

#### **3.2 Purchase Orders**

Once you have found the right supplier in compliance with the correct procedure required by these order, you must not make verbal commitments but must raise a Purchase Order (via a SAP or equivalent service-specific system). This must be approved according to the council's Financial Regulations before it is sent to the supplier.

You must not raise the order retrospectively (that is, once the goods or services have been delivered by the supplier). This is to ensure that the purchase is properly approved in advance and that the commitment against the budget is clearly visible to the budget-holder. Failure to raise an order in advance is a breach of these orders.

#### **3.3 Setting up a new Supplier**

To set up a new supplier in order to raise a purchase order, please refer to the guidance on Setting up a new Supplier.

#### **3.4 Select Lists**

Select lists are lists of approved suppliers who have been pre-assessed or qualified in order to provide defined goods, works or services to areas of the Council in line with requirements of the Orders. PRG must approve proposals to establish a select list of approved suppliers developed with the relevant Category Specialist in Procurement. This must happen at least 2 weeks before a list is compiled or reviewed. Suppliers on any existing list must be asked if

they wish to join the new list, provided they can evidence meeting new assessment criteria or requirements.

A list must not normally operate for longer than 4 years and any appropriate continuing requirements for membership of the list, such as insurance obligations, should be included. The operation of the approved list in awarding contracts, and options to re-opening to new suppliers, any exemptions and/ or suspension of suppliers must be defined in writing as part of the approval of the list's establishment sought from by the relevant service area and Category Specialist, from PRG.

### **3.5 Collaboration**

The council may enter into collaborative agreements with other public bodies or Central Purchasing Bodies where this offers best value for money for residents. The appropriate sign-offs and procedures as set out in the Procurement Standing Orders and Public Contract Regulations need to be followed when undertaking collaborative projects and spend, as well ensuring any risk is managed appropriately.

For the avoidance of doubt, the contract award procedure in the case of collaborative contracts must be:

- Total contracts (or possible) value of contract (all contracts in the case of a Framework Agreements or Dynamic Purchasing System) where we act as lead or awarding Contracting Authority
- Where calling-off contracts from established collaborative agreements, via the procedure set out for the element of spend and risk for the council's budget only.

### **3.6 Frameworks agreements and Dynamic Purchasing Systems**

Procurement can provide advice on all aspects of the operation and use of collaborative and framework agreements or Dynamic Purchasing Systems. There are a number of established central purchasing bodies, such as the Government Procurement Service and the 'Pro5' organisations, who establish framework agreements and Dynamic Purchasing System which the council can utilise.

#### **3.6.1 Framework Agreements**

A framework agreement is a general term for an agreement with suppliers that sets out terms and conditions, under which specific purchases, or call-offs, can be made throughout the life of the agreement. The procurement activity to establish a framework agreement is subject to the EU procurement rules. There are different mechanisms for placing call-off orders under a framework agreement and at all times the council must ensure transparency and non-discrimination.

The council may establish a framework agreement and make this available to other contracting authorities, or make use of framework agreements awarded by other public sector bodies.

##### **3.6.1.1 Setting Up a Framework Agreement**

When putting a framework agreement in place, the Procurement Standing Orders apply to the process.

During the initial framework set up, the rules of the framework are developed and these apply to any subsequent arrangements that are let from the original framework.

### 3.6.1.2 Using and Operating a Framework Agreement

When using a Framework Agreement not established by the Council, Legal Services must be instructed to satisfy themselves that to the best of their knowledge the original agreement:

- (i) was tendered for in accordance with the Public Contracts Regulations 2015 or Public Concessions Directive 2013 for the potential use by the council,
- (ii) is in the interests of the council,
- (iii) contains conditions of contract acceptable to the council, and
- (iv) Contract Award Notices are published in accordance with the EU Procurement or Concession legislation (see section 7.1)

Access Agreements to join Framework Agreements for frameworks set up by other public bodies, once confirmed to have met these criteria, can be signed by a Category Manager.

Framework agreements can be used to source contracts for any value that fall within the scope of the framework and advice should be sought from Procurement. Frameworks have their own distinct rules which are defined as part of establishing the framework agreement. Specific rules governing an individual framework take precedence over the Procurement Standing Orders when these differ, e.g. to allow for the use of different number of suppliers and standards etc. Other obligations of the Procurement Standing Orders still apply and must be followed when utilising a framework agreement.

A Contract Award Notice for **all** contracts awarded from framework agreements must be published on the Contracts Finder website. See section 7.1 for more details.

### 3.6.2 Dynamic Purchasing System

A Dynamic Purchasing System (DPS) is an entirely electronic system where suppliers are able to express an interest and be evaluated against a defined set of suitability criteria in order to gain access to the DPS. The DPS must be open to any suppliers to apply to join it at any time during the operation of the DPS.

All opportunities for contracts being awarded from the DPS must be issued to all relevant suppliers on the DPS on the appropriate section of this. The operation on the DPS and all call-off contracts must comply with the timescales and evaluation procedures in accordance with the Public Contract Regulations 2015.

If you wish to use a DPS that has been established by another public body or central buying group, and which is open and available for use by the Council, it shall be subject to the same principles and checks as set out above under 'Framework Agreements'.

You must ensure that the call-off and award procedures are compliant with the requirements of the PSOs and Public Contract Regulations when awarding contracts from a DPS.

A Contract Award Notice for **all** contracts awarded from a DPS must be published in the Official Journal of the European Union. See section 7.1 for details.

## 3.7 Concession Contracts

A concession contract is one where the consideration consists of the right to exploit works or services or that right together with payment **and** where the operating risk is transferred to the supplier. Examples of concession contracts include toll bridges, canteen services and

outsourced leisure centres. Additional details or advice on concession contracts can be obtained from the Procurement team.

### **3.8 Using Purchase Cards**

You may only use a Purchase Card where there is no existing suitable supplier available and the spend value is below the level set out in the 'Purchase Card Rules and Guidance', unless otherwise agreed in writing by Procurement, or in life-critical circumstances (see also section 5.2).

Except in the case of a declared emergency, Purchase Cards **must only** be used for spend in line with the guidance on the use of Purchase Cards that is maintained on the intranet.

### **3.9 Commercial Confidentiality and Intellectual Property**

If you are discussing developments with suppliers you should take care to ensure that you do not inadvertently share key commercial or confidential information such as budgets, existing pricing from other suppliers, or suggestions for improvements unless you have a non-disclosure agreement in place.

This protects the council's interests and our intellectual property. Procurement are responsible for putting these agreements in place where appropriate with advice from Legal Services, and can provide commercial advice and support in dealing with suppliers. Where arrangements include the Intellectual property of the council, appropriate or relevant contract clause/s must be included.

### **3.10 Service-Specific Arrangements**

Several Council Services use local systems to send orders to suppliers, for example: Adults Social Care, Transport, Highways, Property and Libraries. All such systems must support financial approval of orders in accordance with the Financial Regulations and ensure compliance with the requirements of the PSOs in delivering any applicable service-specific obligations.

Business Operations will maintain all supplier master data on these systems to ensure it is of high quality and consistent with the master database of suppliers kept in accordance with section 1.4 of these orders.

### **3.11 Consultants**

#### **3.11.1 Definition**

A consultant is defined as a person or company that advises on organisational change and/or provides subject matter expertise on technical, functional and business topics during development or implementation.

- No contract of employment is involved, even if one individual consultant is retained, but there is a contract for services that is defined as being 'self-employed'.
- This should be made clear in all documentation and payment made for the service on the basis of a fee, not a salary.
- Ordinarily consultants will be VAT registered; subject to Schedule D tax, and have professional indemnity insurance at appropriate levels (see section 6.1).

- Consultant must have clearly defined project objectives and performance targets. You should also evaluate the use of a consultant in terms of delivery against these.
- A requirement for skills transfer to internal staff should be included where appropriate.

You must source all other interim staff covering internal posts, and all temporary or agency staff by reference to the appropriate corporate contract or arrangement.

All external legal opinion and advice as required by the Director of Legal Services is exempt from the provisions of this section.

### **3.11.2 Approval for Consultant engagements**

If you are contemplating using consultants/contractors you must refer to the processes and limits in section 4 of these Orders. Due to the nature of consultancy spend, additional locally-agreed governance around approval for consultants may be required. Please check relevant guidance on Consultancy Spend to ensure compliance.

## **4 Sourcing your Contract**

### **4.1 Existing supplier/contracts**

In the first instance, where contracts are in place for goods, works or services, these should be used. You can check the products and suppliers available and maintained by Procurement on the Intranet.

Regardless of value, framework agreements and Dynamic Purchasing Systems that meet the requirements of these Orders under section 3.6 can be used where they provide best Value for Money.

Refer to section 3.11 for specific approvals in relation to Consultancy contracts.

### **4.2 Contracts up to £14,999**

For contracts for works, goods or services (excluding consultancy – see section 3.11) with an estimated value up to £14,999, the appropriate budget holder must obtain at least one written quotation. It is however, advisable to seek further quotations in order to evidence achieving best value for money.

Alternatively you may place an order with a contractor under a corporate contract, framework agreement or DPS, where such arrangements have been put in place by the Council.

Where a select list exists the quotation must be obtained from an approved supplier on the select list. If they offer best value, you should use a locally-based supplier.

### **4.3 Quotations for Contracts £15,000 to £99,999**

In the case of contracts with an estimated value of greater than £15,000 but not exceeding £99,999, the appropriate budget holder must seek at least 3 written quotations.

You may invite competition from a framework agreement or DPS established where such arrangements have been put in place or approved for use by the Council. Written, faxed or emailed quotations are acceptable but normally the e-tendering system will be used. Where a select list exists for a specific requirement, the quotations should be obtained from

approved suppliers on the select list. Where appropriate, at least one locally-based supplier should be included in those invited to quote.

Quotation procedures must be undertaken using a single stage (open) procedure, incorporating the standard suitability assessment criteria required under the Public Contract Regulations 2015 relating to lower value contracts. In seeking quotations, due regard must be given to any guidance or standard quotations templates issued by the Head of Procurement.

If 3 quotations cannot be obtained, even when the market has been tested, then this should be reported with full details to Business Operations who will maintain a full record for audit trail.

All purchases must be delivered under a form of contract approved by Legal Services and Procurement. Where a standard contract cannot be used, the Buying Solutions team will inform Legal Services as early as possible in order for the appropriate legal resources to be made available. Documents such as specifications may also be sent to Legal Services to assist with the contract drafting.

Note: for consultancy engagements, see para 3.11.

#### **4.3.1 Advertising for Quotations**

When a contract over £25,000 is advertised in **any way**, this **must** be done via Contracts Finder and involve a one stage process. This should include appropriate selection criteria to assess the experience and capability of the supplier and the nature of the contract required. Insurance requirements in section 6.1 must be included. All such opportunities should also be advertised to local suppliers via the Supply2Surrey and or Supply2EastSussex website as appropriate. Before advertisement, you must confirm budget availability with the appropriate Finance Manager.

#### **4.3.2 Contract Award Notices for Quotations**

For contracts awarded over a value of £25,000, a Contract Award Notice also has to be published on Contracts Finder. See section 7.1 for details.

#### **4.3.3 Business Operations**

The Business Operations team can confirm whether or not existing suppliers and contracts can meet your requirement/s.

The Business Operations team will carry out quotation procedures and activities for you. They can supply a Request for Quotation form, which you complete and attach to when raising Shopping Cart.

The Business Operations team then decide the most appropriate approach to the market to get you the best value. Where a framework agreement or DPS exists and offers best value, they will carry out a mini-competition exercise to select an included supplier. This is normally done via the agreement owner's website. The Buying Solutions team will check with Legal Services before starting a mini-competition, in order to ensure the council can legally access the agreement.

## 4.4 Tenders for £100,000 or over

### 4.4.1 Procurement Strategic Sourcing Gateway Process

If the aggregate value is £100,000 or over Procurement must lead the sourcing exercise. This exercise and the subsequent contract award follows the Procurement Strategic Sourcing Gateway Process. This ensures we:

- follow proper legal procedure/s
- manage the progress of our projects,
- maintain a record of the sourcing decisions made on behalf of the council.

The process has five gateways that must be completed for each project as it progresses from stage to stage:

**Gateway Zero:** Used internally in Procurement to identify pipeline projects agreed at a strategic level with senior Service managers as part of the business planning process.

**Gateway One: Initiate**, where the requirement is confirmed and work begins on the Strategic Procurement Plan (Project Brief section).

**Gateway Two: Formal Approval**, where the PRG reviews the Strategic Procurement Plan and approves those that are acceptable.

**Gateway Three: Implement**, where the resulting contract is awarded.

**Gateway Four: Handover & close**, where the contract is mobilised and ongoing responsibilities are identified and implemented, including contract and supplier management. Lessons learnt are also captured.

Note that the acceptance, opening and evaluation of formal tenders must be carefully controlled to ensure fairness to all bidders. This process is managed within Procurement and is controlled by the electronic tendering system.

Because we must comply with EU and UK law on procurement, we must observe certain minimum timescales for delivery that are designed to ensure that fair competition is maintained at each stage. When planning for procurement projects, you need to allow several months for this, depending on the exact process that is to be used. Procurement Category Specialists can advise you about the detailed timescales relevant to your particular project.

### 4.4.2 Procurement Review Group

The Procurement Review Group (PRG) is mandated to control expenditure, ensure best value and monitor compliance for all procurement activity with an aggregate value of £100,000 or more. The PRG approves the procurement strategy and contract awards as set out in a Strategic Procurement Plan document and in accordance with the Procurement Gateway process.

The PRG also enforces compliance with these Orders and advises Human Resources and relevant manager of any areas of deliberate disregard. Procurement keeps a record of all submissions to the PRG, which is cross-referenced to contract documents in the Contract Management System.

To be approved, you must obtain both written budget approval from the appropriate Finance Manager and the unanimous consent of all of the managers listed below who are present at the meeting. There must be a minimum of 2 representatives present, of which one must be from Procurement:

- Head of Procurement (or delegated substitute) and at least one of either:
- Section 151 Officer (or delegated substitute) or
- Director of Legal Services (or delegated substitute)

The PRG is chaired by Procurement. Any delegated substitute is responsible and has the authority as if the officer themselves had attended. The PRG meets regularly; all submissions must be provided at least 3 working days prior to the meeting.

Whilst awaiting PRG approval you may take no further action regarding your purchase.

#### **4.4.3 Sustainability and Social Value**

The Public Services (Social Value) Act 2012 places an obligation on us to consider the economic, social and environmental well-being of our area when we award services contracts over the EU threshold. We apply this to all procurement over £100,000 as well. The requirements of the partnership's Employment and Skills through Procurement Policy also need to be taken into account and included in all applicable contracts.

The Council's Sustainability Framework, which aims to support sustainable economic development, minimises the impact on the environment and supports social cohesion. Our procurement approach covers these areas:

- (i) Economic Sustainability – we aim to purchase goods, works and services which enhance the local economy. We recognise the importance of Small & Medium Enterprises to the local community and ensure every effort is made to make our contract opportunities and tender processes accessible to them.
- (ii) Social Sustainability - we aim to purchase goods, works and services which promote community well-being, and that supply chain partners operate fair and ethical working practices.
- (iii) Environmental Sustainability – we aim to purchase goods, works and services which minimise our carbon footprint, encourage a positive impact on the local environment, and have the best value costs and benefits taking into account their whole life cycle from origination to disposal.
- (iv) Equalities & Diversity - we only purchase goods, works and services from suppliers who meet our standards of equality of employment and service delivery, and we ensure that the tender process is free from discrimination or perceived discrimination in accordance with the council's Equality Policy
- (v) Compact – where we are purchasing from the voluntary, community and faith sector you must comply with the Compact best practice code.

Procurement must consider Social Value when planning tenders for all contracts over £100,000. A Social Value Assessment must be carried out and the results recorded in the Strategic Procurement Plan. Procurement ensures that our practice is aligned with the council's policies in this area, for example in driving apprenticeship and training opportunities and increasing local spend.



#### 4.4.3.1 Sourcing of Sustainable Timber

The EU Timber Regulation 2013 prohibits anyone from placing illegally sourced timber on the EU market. Further information on this and the Council's position in relation to timber sourcing is available on the intranet and via the Helpdesk.

#### 4.4.4 Evaluation

Tenders over £100,000 are evaluated by Procurement based on the identification of the 'Most Economically Advantageous Tender (MEAT)'. This takes price into account, alongside quality and social value considerations, but does not require the tender to be awarded to the lowest priced bidder

### 4.5 Tenders over EU Procurement Thresholds

#### 4.5.1 EU Thresholds

Contracts with a value over the EU thresholds are subject to the requirements of the Public Contract Regulations 2015 (or the Public Concessions Directive 2013). EU Thresholds are updated every two years. The current values can be found on the intranet. [Link - http://www.ojeu.eu/threshholds.aspx](http://www.ojeu.eu/threshholds.aspx)

#### 4.5.2 Procurement Procedures

Within the EU regulations there is a choice of five separate tendering procedures, these are:

<ul style="list-style-type: none"><li>• Open procedure – also known as a one stage process, this just uses a full tender process with no pre-qualification;</li></ul>
<ul style="list-style-type: none"><li>• Restricted procedure – also known as two stage process, which has a pre-qualification section and then moves to a full tender process;</li></ul>
<ul style="list-style-type: none"><li>• Competitive Procedure with Negotiation– is a method where the market is engaged directly in dialogue (usually with more than one supplier) in order to successfully engage a supplier. Timescales are variable because of the nature of the procedure;</li></ul>
<ul style="list-style-type: none"><li>• Competitive Dialogue procedure – this method is used usually where the requirement is very complex and cannot be clearly defined up front by the Council. The timescales are very variable but allows for several rounds of dialogue with potential suppliers.</li></ul>
<ul style="list-style-type: none"><li>• Innovation Partnership – this process is reserved for use where the Council identifies the need for an innovative product, service or works not currently available that it requires a partner/s to develop / research. It follows the same process as the Competitive Procedure with Negotiation</li></ul>

For all contracts, except those covered by the Light Touch Regime, one of these procedures must be selected and approved in the Sourcing Strategy by the Procurement Review Group (PRG) and as set out by the Public Contract Regulations.

The Light Touch Regime covers Health, Education and Social Care contracts. As with all procurements, the process undertaken to award the contract must be fair, open and transparent. Approval for LTR tenders must follow all approval processes as set out in table 2.2.1

#### 4.5.3 Tender Records

For all contracts over EU threshold values, a full record of all key decisions and process in relation to the procurement procedure will be kept and maintained by Procurement as required by the Public Contract Regulations 2015.

## 5 Waivers and Emergencies

### 5.1 Waivers

These Orders are mandatory and must be adhered to at all times, so **Waivers** are only granted in exceptional circumstances and cannot be given if they would contravene the Public Contracts Regulations 2015 or any other applicable legislation. **No** waiver is granted retrospectively; this is viewed as non-compliance with these Orders and is reported to PRG.

In any remaining exceptional circumstances you must obtain approval for a waiver in writing prior to progressing with your purchase. A waiver may only be granted where best value will be achieved and where this has been demonstrated in the waiver request. The approval required for a waiver is as follows:

**Where the aggregate purchase value is for less than £100,000** a Procurement Category Manager or above may grant a waiver to these Orders.

**Where the aggregate value of the purchase is over £100,000** the Procurement Review Group (PRG) must ratify the waiver. In certain circumstances the PRG may refer the waiver request to the Cabinet for further approval.

It is important to note that a waiver can only be made with respect to these Procurement Standing Orders. A waiver **cannot** be made with respect to the council's obligations under the Public Contracts Regulations 2015 or any other legislation.

Procurement maintains a log of all waivers approved by Procurement and by PRG.

### 5.2 Emergency Purchases

An **emergency** purchase is only allowed in the case of life-critical requirements for purchasing outside the hours 9am to 5pm. They also apply in situations outside these hours where there is a need to secure Council property or assets e.g. when there has been a break in or failure, such as flood. You can use a Purchase Card, within your allocated limits, to pay. If the supplier does not accept Purchase Cards then you may give a verbal order and raise a formal purchase order the following working day. You must also inform Business Operations of any emergency purchases on the following working day.

## 6 Liability and Security

### 6.1 Insurance Liability

To protect the Council, insurance is often required where we use different types of goods, works or services provided by a supplier (including consultancy).

We normally look for relevant levels of cover for Public Liability Insurance and Employers' Liability Insurance (where appropriate), and for advice and design services we also ask for Professional Indemnity Insurance.

To obtain advice on what level of insurance is appropriate, contact the relevant officer within the Insurance Team. The agreed level of insurance should be recorded in the contract management system.

## 6.2 Financial Security

Procurement and/or Finance must confirm that suppliers are financially robust prior to contract award.

If either the total aggregate value of the contract exceeds £2m within twelve months, or there is doubt as to the financial credibility of a supplier but the council has decided to accept the level of risk, then additional forms of security to a level determined between Legal and Financial Services are required, for example:

- a Parent Company, Ultimate Company or Holding Company guarantee where their finances prove acceptable;
- a Director's Guarantee or Personal Guarantee where finances prove acceptable;
- a Performance Bond, retained funds or cash deposit;
- any other security (such as escrow arrangements) as determined by Finance and/or Legal Services.

All documents inviting tenders must contain a statement that the supplier needs to provide security of performance and the level of security needed.

Additional documentation, where required, should be stored on the electronic tendering system.

## 6.3 Document Retention periods

The retention of tenders and contractual documentation is prescribed in the Limitation Act 1980 and the Public Contracts Regulations 2015

- All received Tenders & PQQs must be retained for a minimum of eighteen months following the issue of the Contract Award Notice.
- All signed contracts under £499,999 (including all tender documentation) must be retained for a minimum of six years following contract expiry.
- All signed contracts signed over £500,000 (including all tender documentation) must be retained for a minimum of twelve years following contract expiry.

Procurement must maintain an online record confirming location of contract/tender and scheduled date of destruction.

## 7 Managing Contracts

All purchases must be delivered under a form of contract approved by Legal Services and Procurement. The council manages the process of awarding contracts via its e-tendering and contract management systems, to ensure that contracts are properly filed and documented.

Where contract funding is received by the council from a third party (for example, an incoming grant), the contract terms must include a provision for the termination of the contract should that funding cease to be available.

### 7.1 Contract Award Notices

As soon as is practicable after the conclusion of the contract, a Contract Award notice must be published on the Contracts Finder website for all contracts:

- Over a value of £25,000
- For **all** call-off contracts from Framework Agreements

All staff undertaking procurements competitions from Framework Agreements are responsible for the providing the required appropriate information to enable publication of the Contract Award Notice by Business Operations.

A Contract Award Notice must be published on both Contracts Finder and the Official Journal of the European Union, within the timescales set out in the Public Contract Regulations 2015 for all contracts:

- Over EU Threshold values
- For **all** contracts called-off from a Dynamic Purchasing Systems

For contracts below EU threshold and where commercial sensitivity or personal information is associated with the publication of this information, please contact Procurement for advice.

## **7.2 Contracts Register**

All contracts, including any variations or amendments, must be registered and maintained by Procurement. The Council's contract management system must be used to store both scanned copies and summary data relating to all contracts over £15,000.

All original signed contracts must have a completed summary contract certificate and be stored in a secure fireproof location. Contract certificates are supplied by the Category Specialist, who ensures the signed contract is submitted for scanning and safe storage.

All contracts over £100,000 must have a designated Contract Manager, recorded on the contract certificate and on the contract management system. This role is agreed as part of Gateway Four Handover and Close.

In the case of suppliers where spend is via Purchase Order rather than a specific signed contract, the council's standard terms and conditions apply.

## **7.3 The management of critical and strategic contracts**

The Procurement Service identifies the strategic and critical contracts (based upon value, business and reputational risk) required to deliver key council services in consultation with the relevant Service. Procurement takes responsibility for the commercial relationships with these suppliers, working with the designated contract managers who lead on the operational performance of the contract.

For all other remaining contracts, the Service is responsible for contract management. Training for contract managers is available via the intranet. Procurement will provide second line support where performance failure is demonstrated and ensure best practice guidance and frameworks are communicated.

All identified strategic and critical contracts must have a written business continuity plan, to be held on the contract management system. Commercial discussions about the development of products/services provided via these contracts must be led by Procurement.

## **7.4 Contract Amendments and Extensions**

A contract may only be amended (or varied) if the contract permits such a variation and is allowable under the Public Contract Regulations. Further guidance is available on the intranet.

You must discuss requests to extend or amend contracts with the relevant Procurement Category Specialist. Such variations must be planned in a timely way, and not be used as a

way to avoid the proper tender procedures. Variations must also take into account any requirement in the specification and consider if this needs updating to meet current needs.

You require the agreement of Legal Services and the Head of Procurement before any amendments are made, to confirm that they fall within the allowed scope and whether publication of a “Notice of modification of a contract during its term” is required.

All amendments must then be recorded in writing, signed appropriately and retained with the original contract.

Contract extensions that are allowable under these Orders and Public Contract Regulations must also be approved in line with the table below are shown in table below. These arrangements include amendments and extensions and the aggregate value of the contract determines the approval.

Contracts amendments or extensions must be approved and signed (or sealed) according to the table below and executed as per the original contract, via Legal Services.

#### **7.4.1 Approval of Contract Amendments and Extensions**

<b>Value of Extension</b>	<b>Approval</b>
Up to £99,999	Head of Service
£100,000 - £499,999	Category Manager
£500,000 and over	Head of Procurement

- 8 The Head of Procurement reserves the right to refer the approval decision for contract amendments or variations to s.151 Officer, Lead Cabinet Member or Cabinet as necessary, in accordance with the thresholds for Contract Award Paying our suppliers.

#### **8.1 Invoice Payments**

Suppliers must issue all invoices direct to the address provided by Business Operations. No invoice may be received or processed directly by your Service unless it is agreed as a payment exception by the Head of Procurement, who may agree general exceptions where Service-specific systems are in use. Business Operations are responsible for maintaining a register of all agreed payment exceptions.

All invoices received in Business Operations must include a purchase order number. Invoices without a PO number will be returned to the supplier.

Suppliers cannot be paid until you have confirmed that the requirement has been satisfactorily delivered. It is the ‘shopper’s’ responsibility to ensure all purchases are receipted to the appropriate value and in a timely fashion.

#### **8.2 Payment Terms**

Payments to suppliers are normally made 30 days in arrears, from the invoice date, via BACS (electronic bank transfer). The council discourages paper invoices and suppliers are expected to provide electronic invoices

You must obtain the agreement of the relevant Category Specialist and Finance Manager for any deviation from the standard payment terms. This must be in writing as a Payment Exception. Where payments are agreed in advance, appropriate review of a supplier's financial stability and standing and due regard for risk in the event of supplier failure must be undertaken and agreed by the Head of Procurement and relevant Finance Manager.

The Late Payment of Commercial Debts Regulations 2013 requires us to pay interest and fixed charges if we pay suppliers late. The council is a signatory of the Government/ICM Prompt Payment Code, and aims to pay all invoices within the agreed terms.

The Public Contract Regulations 2015 require that all council contracts will contain clauses confirming that all sub-contractors will have invoices paid no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed. The same payment terms will also apply to all sub-contractors involved in providing the contract (the supply chain).

### **8.3 Purchasing Cards**

Purchasing Cards can only be used for spend in line with the 'Purchase Card Rules and Guidance' maintained on the intranet, except in the case of a declared emergency as defined in section 5.2.

### **8.4 Electronic Invoicing**

The Council aims to move all invoicing to electronic format to make it easier for our suppliers to trade with us and to track the progress of orders and payments.

Where you are using a supplier registered for electronic invoicing you must follow the rules and guidance issued by Procurement. The Council's main supplier portal supports early payment to suppliers in return for a small discount. Such discounts are recovered centrally by Finance.

## **9 Disposing of surplus goods**

A competitive process must be used for the disposal of surplus goods, though separate procedures apply to the sale of land and / or property. In principle, for assets being sold with a value of:

£0 - £14,999	A minimum of 1 bid is required
£15,000 - £99,999	A minimum of three bids must be invited;
£100,000 and over	A minimum of three sealed bids must be invited

You must seek advice from Procurement when making valuations and the book value of the asset will be primarily used to calculate value. In most cases, it is anticipated that the highest bid received will be accepted.

Care must be taken to ensure that environmental sustainability as well as security and other associated issues and obligations (including those from the Data Protection Act and WEEE Regs and) must be considered and/or complied with when arranging for the disposals of goods.

## 10 Legal status of these Procurement Standing Orders

The council is required by section 135 of the Local Government Act 1972 to maintain these Orders as part of our Constitution.

The Head of Procurement is the custodian of these Orders and is responsible for keeping them under review. If the EU Directives or any other law is changed in a way that affects these Orders then the Head of Procurement will issue a bulletin and the change must be observed until the Orders can be revised.

## 11 Glossary of terms

Term	Description
Aggregate value	The total spend with a supplier over the period of a contract, or the proposed period for new contracts. Individual or annual costs are irrelevant where goods, services or works are of the same type or have similar characteristics. The total cost of the contract (including any extensions available) must be used when deciding which process to use to find a new supplier
Business Operations	Definition and role in section 4.3
Collaborative agreement	An agreement entered into by a group of authorities acting together in partnership in relation to a particular procurement or series of procurements governing the manner in which the procurement will be dealt with, and a governance regime around how decisions will be made, liability and payments will be dealt with.
Compact	Definition – local agreement
Concession Contracts	A concession contract for works or services as defined by the Public Concession Directive 2013. Contracts are defined where all or part of the payment for the contract consists of the right to exploit the works or services or right together with payment, as well as transferring the operating risk to the supplier.  e.g. toll bridges, canteen services, outsourced leisure centres
Contract Award Notice	All contract opportunities advertised on Contracts Finder, as well as for <b>all</b> contracts called-off from a Framework Agreement, a Contract Award Notice detailing the successful supplier and contract details must be published on the Contracts Finder website.  Contracts over EU thresholds or <b>all</b> call-off from Dynamic Purchasing Systems must have a CAN published in the Official Journal of the European Union within 30 days of conclusion of the contract (these can be grouped and published quarterly for DPS call-off contracts)
Contracts Finder	Government website where all contract opportunities over £25k, where advertised, <b>must</b> be published. Contract Award Notices for relevant contracts must also be published on the site in a timely manner: <a href="http://www.contractsfinder.gov.uk">www.contractsfinder.gov.uk</a>
Consortium	A grouping of two or more organisations who agree to work together in order to deliver goods, works or services to the

	council.
Consultant	Definition in section 3.11.1
Contract	An agreement having a lawful objective entered into voluntarily by two or more parties, each of whom intends to create one or more legal obligations between them. The elements of a contract are "offer" and "acceptance" by "competent persons" having legal capacity, who exchange "consideration" to create "mutuality of obligation."
Contract Management	The process which ensures that both parties to a contract fully meet their obligations as efficiently and effectively as possible in order to meet the business and operational objectives of the contract and in particular to provide value for money.
Dynamic Purchasing System	An entirely electronic system established that admits all suppliers able to meet the defined selection criteria. New applicants meeting the requirements must be evaluated and admitted to set timescales at any point during the duration of the DPS. Call-off contracts from a DPS invite all suppliers on the DPS or relevant section of it to submit a tender and must have a Contract Award Notice published in the OJEU.
Framework Agreement	An agreement or other arrangement between one (or more) contracting authorities and one or three or more suppliers which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the supplier will enter into one or more contracts with a contracting authority in the period during which the framework agreement applies. Generally framework agreements do not have any guaranteed minimum volumes of spend. Call-off contracts awarded via a framework can be via a direct award to a supplier on the framework or by holding a secondary (mini-competition) process that specifies the specifics of the actual contract being procured. The framework will determine how the call-off should be handled.
Gateway (in project)	A milestone in a project where formal approval is given to move to the next stage
Grant	A non-repayable sum of money given to an individual or organisation for a specific project or service, usually covering only part of the total costs.
Purchase Card	A credit card which can be used by authorised people to buy low-value goods or services for the council. The bill for the card is settled centrally in Business Operations, once the card-holder has assigned all transactions to the appropriate cost codes
Purchase Order	A formal order to a supplier for goods or services. This can refer to an order generated by a service-specific system such as PAMS or Swift, as well as from SAP.
Request for Quotation (RFQ)	A formal request to a supplier to provide a price for specified goods, works or services. The RFQ will also indicate how the quote will be evaluated in comparison with others to decide best value. RFQs are undertaken for requirements under £100,000 in value.
Select List	Definition in section 3.4



Shopping Cart	A preliminary request in SAP to buy goods, works or services, which, once approved financially, is turned into a purchase order to the supplier.
Social Value	Those aspects of a contract which support a) community well-being, fair and ethical working practices by the supply chain, b) the local economy and local businesses, and c) improvements to the environment.
Supplier Management	The process of driving improvements from contracts by developing robust performance plans with the supplier.
Supply chain	The chain of suppliers and customers of all the component goods and services that go into delivering a given finished good or service.
Tender	The procurement process of inviting and evaluating sealed bids from people and organisations to provide goods, works or services over £100,000 in value..
OJEU	. Official Journal of the European Union where all notices relating to contracts over European threshold values are placed.

## **12 Appendix A – Supporting Documents and Policies**

[Conflict of Interest](#)

[Consultancy Appointments](#)

[Guidance on purchasing and procurement](#)

[Purchase Cards rules and guidance](#)

[The Surrey Compact](#)

[Procurement Thresholds](#)

[Local Government Transparency Code 2015](#)

[Social Value Procurement Strategy](#)

[Document Retention Schedule](#)

[The Contracts Register](#)