

# **Procurement Standing Orders**

Rules to be followed when buying on behalf of  
Surrey County Council

December 2017 Issue 7

<b>1</b>	<b>Introduction</b>	<b>4</b>
1.1	Legal Status	4
1.2	Key Principles	4
1.3	Compliance	4
1.4	Scope	5
1.5	Roles and Responsibilities	5
1.6	Transparency	7
<b>2</b>	<b>Finding and contracting with suppliers</b>	<b>9</b>
2.1	Grants	10
2.2	Overview and summary table	12
<b>3</b>	<b>Buying Principles</b>	<b>14</b>
3.1	Contract Compliance	14
3.2	Purchase Orders	14
3.3	Setting up a new supplier	15
3.4	Select Lists	15
3.5	Collaboration	15
3.6	Framework agreements and Dynamic Purchasing Systems	16
3.7	Concession Contracts	17
3.8	Using Purchase Cards	18
3.9	Commercial Confidentiality and Intellectual Property	18
3.10	Service-Specific Arrangements	18
3.11	Temporary Staff, Consultants and Professional Services	18
<b>4</b>	<b>Sourcing your Contract</b>	<b>19</b>
4.1	Existing supplier / contracts	19
4.2	Contracts up to £14,999	19
4.3	Quotations for Contracts £15,000 to £99,999	20
4.4	Tenders for £100,000 or over	21
4.5	Tenders over EU Procurement Thresholds	24
<b>5</b>	<b>Waivers and Emergencies</b>	<b>26</b>
5.1	Waivers	26
5.2	Emergency Purchases	26
<b>6</b>	<b>Liability and Security</b>	<b>27</b>
6.1	Insurance Liability	27
6.2	Financial Security	27
6.3	Document Retention Periods	27
<b>7</b>	<b>Managing Contracts</b>	<b>28</b>

7.1	Contract Award Notices	28
7.2	Contracts Register	28
7.3	Contract Segmentation and Management	29
7.4	Contract Modifications and Extensions	29
<b>8</b>	<b>Paying our suppliers</b>	<b>30</b>
8.1	Electronic Invoicing	30
8.2	Invoice Payments	30
8.3	Payment Terms	30
8.4	Purchasing Cards	31
<b>9</b>	<b>Remedies Directive</b>	<b>31</b>
<b>10</b>	<b>Disposal of surplus goods</b>	<b>31</b>
<b>11</b>	<b>Glossary of terms</b>	<b>32</b>

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# 1 Introduction

The Procurement Standing Orders (referred to as the 'Orders' from this point on) 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 is responsible for following these Orders.

This document relates to public sector tendering and purchasing procedures and the legislative framework that surrounds them. Functions delegated to particular officers may be carried out by other officers specifically authorised by them for that purpose.

These Orders must be considered along with the Council's Financial Regulations and Schemes of Delegation.

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

## 1.1 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 Assistant Director 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 AD Procurement will issue a bulletin and the change must be observed until the Orders can be revised.

## 1.2 Key Principles

These Orders are based on these key principles:

- To ensure we meet the Council's statutory duty to Best Value and to create healthy competition and markets for the Goods, Services and Works we buy;
- 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.

## 1.3 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 may lead to disciplinary action and is a breach of the Code of Conduct.

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 AD Procurement determines which takes precedence.

AD Procurement will report breaches of these Orders to the Sourcing Governance Board (SGB).

### 1.4 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, grant funded projects, 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)	Section 12 of The Care Act 2014
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
A declared emergency authorised by the Emergency Planning Officer <sup>1</sup>	The Civil Contingencies Act 2004
Awarding of Grants	Managed according to locally agreed Grant process or Grant Procedure Rules.
Placement of a child with Special Educational Needs in a non-maintained school providing the value of the contract is below the light touch regime threshold.	

### 1.5 Roles and Responsibilities

The AD 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 AD Procurement.

The Procurement Service is responsible for:

<sup>1</sup> Not to be confused with Emergency Purchases as detailed at Section 5.2

- Providing expert market knowledge to help you find the best supplier to meet specified needs;
- Managing all tenders and contract awards over £100,000 in accordance with relevant legislation and regulation;
- Engaging colleagues from Finance, Legal Services and HR in all contract strategies and awards;
- Developing strategic action plans for each category of spend;
- Providing commercial support to Contract Managers;
- Ensuring that good practice contract and supplier management is written into agreements;
- Developing our supply chain to deliver performance improvements;
- Ensuring transparency over spend, contracts and contract opportunities;
- Embedding social value and sustainability across the supply chain;
- Ensuring efficient and effective purchasing practices are in place for all staff;
- Working with Business Operations to manage a master database of suppliers currently on SAP.

Anyone who buys from suppliers is responsible for:

- Complying with these Orders;
- Ensuring there is adequate budget available;
- Raising and ensuring a purchase order is approved before the requirements are delivered to the Council, regardless of which system is used;
- Ensuring technical specifications meet the defined need and requirements;
- Ensuring that where the requirement is for temporary workers or consultants outside of the corporate framework agreement, HR is consulted in the first instance and the appropriate approval obtained;
- Ensuring specifications take into account equality and diversity as well as social value implications, and carrying out Equality Impact Assessments where appropriate;
- Putting in place effective monitoring of the performance and management of contracts;
- Engaging with Procurement at the earliest opportunity where the requirement is likely to exceed £100,000 in value;
- Engaging with Buying Solutions / Sourcing Solutions Team where the requirement is likely to exceed £15,000 in value;
- Using existing corporate contracts or select lists of suppliers where in place;
- Following the corporate process at the earliest opportunity when you need a new supplier;

- Ensuring all procurement activity within the contract lifecycle is conducted in accordance with the Orbis Ethical Procurement Statement;
- Ensuring that all suppliers to the Council adhere to the Supplier Code of Conduct.

## **1.6 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 Local Government Transparency Code 2015 and PCRs.

### **1.6.1 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) whilst it remains relevant.

All contracts awarded which are valued at greater than £25,000 must be published via the national Contracts Finder website, regardless of whether they were originally advertised there or not.

### **1.6.2 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.

### **1.6.3 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 all purchases we actively encourage the use of locally-based suppliers where they can offer best value for money. Local is defined as within the county boundaries of Surrey. If no supplier exists within these boundaries this can be extended to include Orbis partner county boundaries.

Officers are required to use their purchasing power to work with local businesses wherever possible where this provides equal or better Value for Money for the Council than alternatives. However it must also be noted that the EU public procurement legislation requires that any procurement activity should not discriminate, favour or show bias.

Officers should carefully review the required specifications of any Contract to ensure that small and medium sized enterprises are not being disadvantaged in their ability to tender for goods, works or services with the Council.

For contracts over the relevant EU threshold Officers must also consider whether the contract should be divided into Lots in order that small and medium sized enterprises can bid for local work. The decision not to divide into Lots should be clearly documented on the Strategic Sourcing Plan.

Where a contract is to be divided into Lots the process followed should still be in line with the total value of all requirements. For example a contract for services which is divided into 4 Lots of approx. £50,000 each would still be subject to the PCRs as the total value of the contract exceeds EU thresholds.

An Officer must not enter into separate contracts nor select a method of calculating the total value in order to minimise the application of these Orders.

#### **1.6.4 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:

- 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;
- Where someone with an involvement in a tender or other sourcing process has an interest in the potential supplier's business;
- 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;
- 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 Code of Conduct and Conflict of Interest Policy, 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 Code of Conduct and Conflict of Interest 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 AD Procurement or authorised delegate 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.

### **1.6.5 Bribery, Corruption , Canvassing and Collusion**

#### **Bribery and Corruption**

Officers must comply with the Code of Conduct and the Council's anti-fraud and corruption strategy and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the Officer to prove that anything received was not received corruptly.

High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to below.

The Council may terminate a contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor's behalf does any of the following things:

- offers, gives or agrees to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done); or
- commits an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972; or
- commits any fraud in connection with any Council contract, whether alone or in conjunction with Council members, contractors or employees.

#### **Canvassing and Collusion:**

All Invitations to Tender shall include a requirement for tenderers to complete fully and sign a form of tender and certificates relating to canvassing and non-collusion.

Every contract shall contain a clause entitling the Council to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation if the contractor or his representative (whether with or without the knowledge of the contractor) shall have practised collusion in tendering for the contract or any other contract with the Council.

## **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. To clarify: Annual value x contract period in years (including options to extend) = Aggregate value. 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 Grants**

In making a grant the Council is not contracting for a service that it might otherwise have delivered itself. Rather it is offering financial support in an area of work, designed and proposed by another organisation, which it wishes to sponsor. The work to be carried out by the other organisation would be deemed to add value to the council's overall aims or objectives. Grant-in-aid is the provision of funding to cover in whole or, more likely, in part, the running costs of an organisation whose work complements that of the Council. The recipient will have discretion over the spending of that funding within the general framework of controls agreed with the Council.

The making of grants or the disbursement of grant-in-aid is not subject to these Orders.

Officers must not engage any third party during the application or development of an application for grant funding, with which the Council wishes to deliver services or works, or purchase goods without consulting Procurement. No undertaking must be given which provides guarantees to any third party regarding further work, services or goods to be provided as a result of the Council being awarded grant funding.

Where the Council is using Grant monies itself or passing it on to a third party, the application of that money is subject to these Orders and may also be subject to the requirements of the relevant grant funding body.

Officers shall determine on a case by case basis whether funding is to be considered as a Grant or a Relevant Contract. In considering the award of a grant, Officers shall also have regard to State Aid and Best Value law.

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

### **2.1.1 State Aid**

Definition: State aid can be defined as any assistance offered by a public sector body in any form whatsoever that distorts or threatens to distort competition by favouring certain organisations and / or Suppliers or the production of certain goods. Such aid may take the form of a grant (capital injection), business tax relief, a reduction in rent or preferential finance (this is not an exhaustive list).

Where the Council wishes to administer aid in this manner careful consideration must be given prior to such a grant so as to ensure that it is compatible with EU law. Aid that is not compatible with EU law may be recovered from the beneficiary with interest.

For a grant to be considered as State Aid the following cumulative criteria must be met:

- The beneficiary receives a grant of a benefit or advantage; and
- The aid is given by a Member State or through state resources; and
- The beneficiary receives the aid on a selective basis; and
- The aid granted distorts or threatens to distort competition; and
- The aid is capable of affecting trade between Member States

Granted aid must fulfil all of these criteria in order to be deemed as a State Aid for the purposes of EU law.

Where a grant is defined as State Aid it must be notified in sufficient time to the European Commission. Aid will not be permitted to be bestowed upon the beneficiary until the Commission has reached a decision as to whether it can be deemed as compatible with EU law or not. Where Aid is incompatible the Council will not be permitted to grant it.

### **Exemptions for State Aid**

Besides seeking approval from the European Commission, State Aid can be said to be compatible with EU law and can therefore be granted legally if:

- For the most part the total de minimis Aid given to a single recipient is less than €200,000 over a 3-year fiscal period;
- Aid in favour of Small, Medium Enterprises, research, innovation, regional development, training, employment of disabled and disadvantaged workers, risk capital and environmental protection;
- Aid measures promoting female entrepreneurship, such as aid for young innovative businesses, aid for newly created small businesses in assisted regions, and measures tackling problems like difficulties in access to finance faced by female entrepreneurs.

Such Aid must still be notified to the European Commission and as a result Council Officers are advised to seek the advice and guidance of the Solicitor to the Council and / or Monitoring Officer where State Aid may be said to exist on a particular project or procurement.

## **2.2 Overview and summary table**

The table at 2.2.1 below sets out the approach that must be followed for each threshold aggregate value. As set out above, and in the Councils' Scheme of Delegations to Officers, functions delegated to particular officers may be carried out by other officers authorised by them.

## 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?
<b>£0 to £14,999</b>	Yes if within rules & guidance and card 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
<b>£15,000 to £99,999</b>	Only in formal emergency cases (see section 5.2)	Minimum of three of which one must be a local supplier	Contact Sourcing Solutions / Buying Solutions who will lead sourcing activity	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 £25,000 on Contracts Finder	6 weeks minimum
<b>£100,000 to £499,999</b>	No	(via tender process)	Issue Tender via Procurement	Procurement	Yes, via Contracts Finder and / or OJEU	Specific contract approved by Legal Services	Sourcing Governance Board (SGB)	Head of Procurement and Head of Service	Yes – over £25,000 on Contracts Finder or OJEU over EU threshold	Up to 6 months
<b>£500,000 and over</b>	No	(via tender process)	Issue Tender via Procurement	Procurement	Yes, via Contracts Finder and/or OJEU	Specific contract approved by Legal Services	SGB and either Lead Member (£500,000-£999,999) or Cabinet (£1million+)	Sealed as a deed via Legal Services	Yes – OJEU over EU threshold	Up to 12 months depending on complexity of requirement

**Notes:**

EU thresholds for Goods and Services is currently set at £164,176 and for Works £4,104,394 as at the 1<sup>st</sup> January 2016.

The current Light Touch threshold is £589,148. It is reviewed every two years and officers should check the current thresholds in place here: [www.ojec.com/thresholds](http://www.ojec.com/thresholds). Procurement can also advise on the latest values.

The Concession Contracts Regulations 2016 (CCR) apply to the award of works Concession Contracts or services Concession Contracts above £4,104,394.

### 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 whether a new procurement is the right option – do we need to buy?
- Establish that there is a budget for this procurement;
- Looking at the applicable section of the table at 2.2.1, plan what needs to be done;
- Ensure all other internal governance arrangements are followed;
- Check that there is no existing contract or framework that is suitable to use for the requirement;
- Engage with Buying Solutions where spend is over £15,000;
- Engage with Procurement where spend is over £100,000;
- Engage with Procurement where (regardless of value) risk or complexity is high; Complex procurement can be defined as where your requirement requires design or an innovative solution; cannot be met without adaptation of an available solution, requires market engagement or prior negotiation; or the legal and financial makeup and/or risks cannot be established with sufficient precision;
- Ensure that where the requirement is for temporary workers or consultants outside of the corporate contract, HR is consulted in the first instance and the appropriate approval is obtained.

#### 3.1 Contract Compliance

Where existing corporate contracts and agreements exist, these should be used and appropriate Service Contract Manager consulted 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. In the unlikely event that an existing corporate contract cannot meet your needs, approval from the Strategic Contract Manager (for that contract) may be required. If for any reason you do not feel that the corporate contract or agreement is suitable for your requirement you must gain approval from the relevant Strategic Contract Manager before proceeding. If the total value of the individual requirement exceeds £100,000, advice should be sought from Procurement before using an existing corporate contract or framework.

#### 3.2 Purchase Orders

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.

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.

### **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. Select Lists may only be used where the total value of the contracts awarded under the select list do not exceed the relevant EU threshold for those goods, works or services and that at the point of establishing the select list the opportunity to apply to be a part of the Select List is openly advertised.

Sourcing Governance Board (SGB) must approve proposals to establish a Select List of approved suppliers developed with the relevant Procurement Manager 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 from SGB.

### **3.5 Collaboration**

The Council may enter into collaborative agreements for the procurement of goods and services with other public bodies or Central Purchasing Bodies where this offers best value for money for residents. Officers must ensure that:

- The Council is a named party to the agreement;
- The call off arrangements set out by the lead authority are followed;
- Appropriate sign offs as set out in these Orders are followed.

The appropriate sign-offs and procedures as set out in these Orders and Public Contract Regulations (PCRs) need to be followed when undertaking collaborative projects and spend, as well ensuring any risk is managed appropriately.

Where the Council acts as the lead contracting authority on behalf of a collaborative partnership two or more public bodies, Legal and Procurement must be consulted to determine the appropriate procedure and contractual arrangements.

A lead contracting authority may take on additional responsibilities in a collaborative framework or contract such as:

- Ensuring the total aggregate value of all contracts does not exceed the advertised contract value
- All parties abide by the contract / call off terms.
- That continued due diligence and performance management is undertaken of the supplier/s
- That appropriate cost sharing agreements are put in place where necessary.

### **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 (DPS). There are a number of established central purchasing bodies who establish framework agreements and DPS 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 PCRs. There are different mechanisms for placing call-off orders under a framework agreement and at all times the Council must ensure transparency and fairness.

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, these 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:

- was tendered for in accordance with the PCRs or Concessions Contracts Regulations 2016 for the potential use by the Council;
- is in the interests of the Council;
- contains conditions of contract acceptable to the Council, and
- Contract Award Notices are published in accordance with the PCRs 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 Head of Procurement.

Framework agreements can be used to source contracts for any value that falls 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 these Orders when these differ, e.g. to



allow for the use of different number of suppliers and standards etc. Other obligations of these Orders still apply and must be followed when utilising a framework agreement.

A Contract Award Notice for **all** contracts awarded from framework agreements, with a value of greater than £25,000 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 PCRs.

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 these Orders and PCRs 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 whilst these regulations apply. See section 7.1 for details.

## **3.7 Concession Contracts**

The Concession Contracts Regulations 2016 (CCR) apply to the award of works Concession Contracts or services Concession Contracts above £4,104,394. Concession Contracts must meet the following requirements:

- The award of the contract involves the transfer to the concessionaire of an operating risk in exploiting the works or services encompassing demand or supply risk or both;
- The part of the risk transferred to the concessionaire involves real exposure to the vagaries of the market, such that any potential estimated loss incurred by the concessionaire is not merely nominal or negligible. The concessionaire shall be deemed to assume operating risk where, under normal operating conditions, it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the Concession Contract.

Concession Contract Regulations may apply to Contracts which are of no financial cost to the Council but which have a pecuniary interest for the Economic Operator.

The same general principles that apply to other procurement rules apply to the award of Concession Contracts. In particular, the Council must treat providers equally and without discrimination and must act in a transparent and proportionate manner.

Seek advice from Procurement and/or Legal Services if you are consider that you might want to award a Concession Contract.

Special rules apply to the procurement of design contests for the acquisition of plans or designs by the Council following adjudication by a jury, as part of a procedure leading to the award of a public services contract of a value in excess of the relevant EU threshold.

Such contracts must be awarded in accordance with the relevant rules set down in the EU Regulations.

### **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 the Monitoring Officer, 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.

Intellectual property is a generic term that includes inventions and writings. If these are created by the Council as a general rule they belong to the Council not the supplier. Certain activities undertaken by the Council may give rise to items that may be patentable, for example software development. These items are collectively known as Intellectual Property.

### **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 these Orders 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 1.5 of these orders.

### **3.11 Temporary Staff, Consultants and Professional Services**

Procurement works closely with HR to manage the Council's workforce needs. This applies to any appointment that is outside the Council's direct employment arrangements and includes the appointment of temporary workers, temporary staffing agencies, independent consultants, consultancy companies and professional or technical services independents or companies.

A consultant is a person (not an employee), agency or firm engaged for a limited period of time on a project or requirement specific basis to carry out a specific task or tasks which meet a desired set of outputs or outcomes. A consultant provides subject matter expertise, support and/or experience to the Council either because it does not possess the skills or resources in-house or which requires an independent evaluation/assessment to be made. This definition excludes: (a) agency staff, interim or role specific duties which should be sourced through the Council's Corporate Contract. (b) routine services e.g. maintenance, cleaning and security. (c) professional services e.g. Architects, structural engineers, forensic archaeologists, specialist social care support, training etc.

- Consultants must be appointed under a contract for services;
- The contract should clearly detail the project objectives, deliverables, milestones, and performance measures and an accompanying payment schedule based on satisfactory completion of the project/milestones should be included;
- The contract must have a clear start and end date;
- The contract must contain provision for in the event of the consultant's work being unacceptable – it must be rectified at no additional cost to the Council;

Temporary workers (also sometimes referred to as 'temps' or 'locums') are usually defined as persons primarily engaged as a short term solution to provide cover for unplanned or emergency staffing shortages. Such shortages may include sickness absences, unexpected increases in workload, or covering a vacancy while you go through a formal recruitment process. Temporary workers are often associated with high costs and must be sourced using the Council's main temporary staffing contract.

In the first instance, any requirements for temporary workers or consultants should be approved by HR if the corporate framework is not being used. This is to ensure the requirement is in accordance with current HR staffing policies and legislation.

Refer to the HR Short Term Resourcing Needs policy for further guidance.

## **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 Buying Solutions 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.

### **4.2 Contracts up to £14,999**

For contracts for works, goods or services 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 request for quotation process should be followed. This is led by Buying Solutions, via the e-tendering system. 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 or emailed quotations are acceptable but in the first instance 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. Local is defined as within the county boundaries of Surrey. If no supplier exists within these boundaries this can be extended to include Orbis partner county boundaries.

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

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

All purchases must be delivered under a form of contract approved by Legal Services (where spend exceeds £50,000) 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 must also be sent to Legal Services to assist with the contract drafting.

#### **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 Supply to Surrey and or Supply to East Sussex 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 Solutions Team within Business Operations can confirm whether or not existing suppliers and contracts can meet your requirement/s.

The Buying Solutions team can supply a Request for Quotation form, for you to complete. They will then carry out the quotation activity for you.

They will then decide the most appropriate approach to the market to achieve 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 Sourcing Plan (SSP) (Project Brief section).

**Gateway Two: Route To Market**, where the SGB reviews the Route to Market within the SSP and approves those that are acceptable.

**Gateway Three: Award**, 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 can advise you about the detailed timescales relevant to your particular project.

##### **4.4.2 Award of Contracts – Above PCR Threshold**

All contracts shall be awarded in accordance with the criteria set out in the Procurement Documents.

For contracts with a value at or above the PCR Thresholds, the Officers shall adhere to the contract award procedures set out in the PCRs and observe a standstill period before entering into the contract. The standstill period will normally end at midnight at the end of the tenth day after the date the Council sends notice to the tenderers electronically, that it has made an award decision.

Where a tendering exercise is regulated by the provisions of the PCR's Bidders must be simultaneously notified (in writing) and as soon as possible after any decision has been made in connection with their exclusion from the process or the outcome of the award decision is known.

The award decision must contain: Details of the successful contractor, the award criteria as set out in the ITT, the characteristics and relative advantages of the winning bidders tender, the scores (as weighted) of both the winning bidder and that of the unsuccessful bidder.

**Debriefing of candidates – Regulated procurements**

The process is set out in Regulation 55 of the PCR's 2015 and must be strictly adhered to.

**Challenges to Award of Contract – Above PCR Threshold**

If a challenge, or threat of a challenge, to the Councils' decision to award is received the officer must contact Legal immediately.

Challenges to the Councils' decision, under the Remedies Directive 2010, initially require the immediate suspension of the contract award and if the challenge is successful, may result in financial compensation being awarded to the claimant (and potentially all unsuccessful bidders) and in some cases the termination of the contract and/or procurement procedure.

**4.4.3 Sourcing Governance Board (SGB)**

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

Procurement keeps a record of all procurement submissions for sourcing and contract award decisions, which will be cross-referenced to contract documents in the Contract Management System.

SGB also monitors 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 SGB, 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 stakeholders listed in the SSP prior to attending SGB. The completed SSP will be submitted to SGB for approval, and depending on whether it is to follow the Lite or Full approvals process attendance will be as follows:

	Lite Process	Full Process
Gateway 2	SGB Chair, Finance Manager (for service), Legal Services representative	SGB Chair, Senior Finance Manager (corporate), Legal Services representative
Gateway 3	Benefits Realised. SGB Chair, Budget Holder (service)	SGB Chair, Senior Finance Manager (corporate), Legal Services representative
	Benefits Not Realised. SGB Chair, Budget Holder (service), Finance Manager (for service) - Procurement discretion (with 5%/10% tolerance)	

For SSPs categorised as Lite (low complexity and low risk regardless of value), the award approval process at Gateway 3 will differ depending on the benefits detailed at Section 11 of the SSP.

If these have been realised and signed off by the relevant Budget Holder then further Financial approval is not required. If these have not been realised then the relevant Finance Manager must also be involved in the approval process. Procurement have the discretion to consider benefits realised if they are within 10% of the original forecast in the SSP.

The SGB is chaired by Procurement and attended by the Section 151 Officer and Director of Legal Services or their delegated substitutes. Any delegated substitute is responsible and has the authority as if the officer themselves had attended. The SGB meets weekly; all submissions must be provided at least 3 working days prior to the meeting.

Whilst awaiting SGB 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 using the Social Value Measurement Charter. This tool applies to all contracts over £100,000 and is available to bidders during the tender stage to select what social value is within their capacity and capability to deliver.

Our procurement approach covers these areas:

- 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;
- 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 including compliance with the Modern Slavery Act 2015;
- 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;
- 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 Scheme;
- Compact – where we are purchasing from the voluntary and community sector you must comply with the Compact Code of Practice on Funding and Procurement.

Procurement must consider Social Value when planning tenders for all contracts over £100,000. An assessment of relevant Social Value must be carried out and the results recorded in the Strategic Sourcing 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 Environmental and Sustainable Sourcing**

All suppliers to the Council are required to comply with all relevant UK and EU environmental legislation and regulation, and any such superseding legislation. The Council may also introduce from time to time particular local and UK policies which support environmental and sustainable procurement and Officers should include these in relevant procurement documentation and procedures.

#### **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 (or equivalent regulation)**

Contracts with a value over the EU thresholds are subject to the requirements of the PCRs (or the Concessions Contract Regulations 2016). EU Thresholds are updated every two years. Procurement can advise on the latest values.

#### **4.5.2 Procurement Procedures**

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

- Open procedure – also known as a one stage process, this procedure involves the Council proceeding directly to Invitation to Tender through open advertisement;
- Restricted procedure – also known as two stage process, which includes selection stage where suppliers are shortlisted against specific relevant criteria followed by an invitation to tender being sent to the final shortlist;
- Competitive Procedure with Negotiation – is a method which is used where the requirement requires design or innovation solutions which cannot be readily identified through market engagement, or dialogue is required to determine with sufficient precision the final legal and financial make up, but that minimum requirements and objectives can be identified prior to procurement. The process normally involves shortlisting of bidders who respond most robustly to the minimum requirements and objectives and then final negotiations are held on certain elements;
- Competitive Dialogue procedure – this method is used usually where the requirement is very complex and where specifications or outcomes of a solution have not yet been clearly defined. This will usually involve an initial shortlisting followed by an Invitation to Participate in Dialogue whereby initial proposals are made proceeding to various stages of dialogue to determine the final solution;
- Innovation Partnership – This procedure is very specific in nature as it targets problem-solving projects focused on R&D, and where the tools for achieving goals or outcomes may not yet exist. In essence the procedure involves a competitive exercise to identify a partner



who can develop the solution and include the ability to award a contract to supply that solution without further need for competition.

**Negotiated Procedure without Prior Publication** – in specific cases laid down by PCR 2015 Section 32 Contracting Authorities may award public contracts by a negotiated procedure without a prior publication.

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

The procedure selected must be in line with the PCRs, detailed in the SSP and approved by the SGB.

#### **4.5.3 Use of Selection Questionnaires (SQs) (Previously known as Pre-Qualification Questionnaires (PQQs))**

The Council shall apply minimum standards of experience, reputation and economic standing to suppliers to test their suitability to bid for a Council contract. For contracts above EU thresholds suitability is usually tested by means of a SQ.

All the methods and criteria used for assessing the suitability of suppliers shall be transparent, objective and non-discriminatory.

Officers must use the Council's standard Selection Questionnaire and adhere to its statutory guidance for all procurements of contracts above the relevant EU Threshold.

For procurements which are below the OJEU thresholds a pre-qualifying stage cannot be used as stated in Regulation 111 of the PCRs.

#### **4.5.4 Contracts reserved for social enterprises and the employee-owned sector**

The Council may reserve participation in procurement processes for limited types of services contracts to certain qualifying organisations from the employee ownership and voluntary sectors. The maximum duration of contracts awarded under this power is three years .

Officers must obtain approval from Legal Services before commencing a procurement in reliance on this Order.

The procedure selected must be in line with the PCRs, detailed in the SSP and approved by the SGB.

#### **4.5.4 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 in the Procurement Report and contain such details as required by Regulation 84 of the PCRs.

## 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 PCRs or any other applicable legislation. **No** waiver is granted retrospectively; this is viewed as non-compliance with these Orders and is reported to SGB.

A waiver is defined as any procurement or contractual action which is not compliant with these Orders. This includes:

- Any extension to a contract which does not contain any further options to extend;
- A direct award of a contract without following the relevant competitive process as set out in these Orders;
- Modification of a contract (such as increased volume or value, additional services or goods) which did not allow for the modification within the original scope advertised or which may breach allowable modifications as set out in Regulation 72 of the PCRs.

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** Head of Procurement or above may grant a waiver to these Orders.

**Where the aggregate value of the purchase is over £100,000** the SGB must ratify the waiver. In certain circumstances the SGB 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 Orders. A waiver **cannot** be made with respect to the Council's obligations under the PCRs or any other legislation.

Procurement and Buying Solutions maintain a log of all waivers approved by SGB.

### 5.2 Emergency Purchases

An emergency purchase is only allowed for purchasing outside the hours 9am to 5pm where there is an imminent risk to life or property. 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.

Issues arising with contracts leading to a requirement for urgent mitigation action are not necessarily considered Emergency Purchases. This will be dealt with as part of risk mitigation within the contract management process.

## **6 Liability and Security**

### **6.1 Insurance Liability**

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

The minimal levels of cover for Public Liability Insurance and Employers' Liability Insurance, and Professional Indemnity Insurance for advice and design services are set out below:

- Public Liability £10m
- Employers Liability £10m
- Professional Indemnity (undertake a risk assessment and take advice from the Insurance Team)

In some instances where the contract value, risk or scope may be particularly high, additional or higher levels of cover may be required. Equally, where some contracts may be suitable for micro business, lower levels of insurance may be considered. 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 both prior to contract award and during the life of the contract as appropriate. Details of the requirements or potential guarantees a supplier may need to provide must be set out in the procurement documents.

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 Services and Finance 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 and contracts issued must contain a statement that the supplier needs to provide security of performance and the level of security needed, financial checks to be applied at tender, plus how financial suitability will be assessed and checks that will be required during the life of the contract.

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. In summary:

- All received Tenders & SQs 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 sealed 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. (Contracts can take various forms from Frameworks, Spot purchases, call off agreement and purchase orders). 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 dealing with liabilities under the contract should that funding cease to be available.

### **7.1 Contract Award Notices**

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 PCRs for all contracts:

- Over PCR Threshold values;
- For all contracts called-off from a DPS within 30 days of the contract award. Contracting authorities also have the option to group together contract award notices and publish them on a quarterly basis within 30 days of the end of each quarter.

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.

For all other contracts under the PCR thresholds, a Contract Award notice must be published on the Contracts Finder website for all contracts over a value of £25,000 including all call-off contracts from Framework Agreements as soon as is practicable after the conclusion of the contract.

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

### **7.2 Contracts Register**

All contracts, including any variations or amendments, must be registered and maintained in the Electronic Contract Management System (ECMS) managed by Procurement. Data regarding contracts may be maintained in other systems i.e. PAMS, Wisdom etc. however the ECMS 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.

All contracts over £100,000 must have a designated Contract Manager throughout the life of the contract as initially defined within the Procurement Engagement Plan (PEP) , recorded on the contract certificate and on the ECMS. The role of the Contract Manager is as defined in the contract management framework segmentation model.

### 7.3 Contract Segmentation and Management

The procurement Service can help classify contracts using a segmentation model. The model will help identify the complexity of the contract and the risks and opportunities involved as well as the offer guidance on the indicative resources required to manage a contract of that nature. Segmentation is dynamic and may change during the lifetime of the Contract

The Contract and Supply Management team within Procurement will provide support, training and guidance in line with the Contract Management Framework. Contract Managers will be responsible for the delivery of all Contract Management activities.

All identified business critical contracts must have a written business continuity plan, to be held on the contract management system.

### 7.4 Contract Modifications and Extensions

A contract may only be amended (or varied) if the contract permits such a variation and is allowable under the PCRs. Further guidance is available from Procurement.

Officers must discuss requests to extend or modify contracts with Procurement and where appropriate Legal Services. Such modifications must be planned in a timely way and must not used as a way to avoid these Orders or PCRs. Modifications 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 Procurement before any modifications are made to a Contract, to confirm that they are lawful and whether publication of a “Notice of modification of a contract during its term” is required. All modifications must then be recorded in writing, signed appropriately and retained with the original contract on the ECMS.

Contract extensions that are allowable under these Orders and PCRs must also be approved in line with the table below. **This is still required in addition to approvals granted at the time the contract was awarded.** These arrangements include amendments and extensions and the aggregate value of these modifications determines the approval. Contracts amendments or extensions need to be made with consultation and approval of the appropriate Service representative and signed (or sealed) according to the table in 2.2.1. and executed as per the original contract.

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.

#### 7.4.1 Approval of Contract Modifications and Extensions

Value of Modification/Extension	Approval
Up to £99,999	Head of Service

£100,000 and over	AD Procurement
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For extensions above £499,999 further advice and guidance is available from the Contract and Supply Management team.

AD 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 at table 2.2.1.

## **8 Paying our suppliers**

### **8.1 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.

### **8.2 Invoice Payments**

Suppliers must issue all invoices via the route 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 AD 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 Purchase Order number will be returned to the supplier.

Suppliers cannot be paid until you have confirmed that the requirement has been satisfactorily delivered. A Purchase Order must be followed by a Goods Receipt Notice before an invoice can be paid. It is the 'shopper's' responsibility to ensure all purchases are receipted to the appropriate value and in a timely fashion.

### **8.3 Payment Terms**

The standard payment terms are 30 days from the invoice date, with payments made via BACS (electronic bank transfer). The Council discourages paper invoices and suppliers are expected to provide electronic invoices.

You must obtain the agreement of Procurement 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 PCRs 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).

## 8.4 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.

## 9. Remedies Directive

Should a successful challenge be made after a contract has been awarded the Court could order the contract to be ineffective. This means that the contract would be cancelled and an alternative method of delivering the service would have to be found, as well as the risk of a financial penalty. This could result in significant costs to the Council. If the appropriate standstill periods are correctly applied, the Council will be able to minimise the risk of any challenge. The AD Procurement is responsible for ensuring the correct contract award processes are followed, including observing a standstill period and publishing a Contract Award Notice for all contracts as required.

### 9.1 Voluntary Ex-Ante Transparency Notice (VEAT)

Should a VEAT Notice be assessed by the AD Procurement and Legal Services as being required to manage potential risk to the Council, this will be approved by the AD Procurement and Monitoring Officer, and a log of all published VEAT notices maintained by Procurement.

## 10. 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) must be considered and/or complied with when arranging for the disposals of goods.

## 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 the application of these orders.
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	The Compact is an agreement between statutory and voluntary organisations in Surrey which aims to improve joint working, communication and collaboration. It provides a framework for how the two sectors should work together.
Concession Contracts	A concession contract for works or services as defined by the Concession Contracts Regulations 2016. Contracts are defined where all or part of the payment for the contract is derived from the right to exploit the works or services for a proportionate income stream, as well as transferring the operating risk to the supplier.  e.g. toll bridges, canteen services, 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 £25,000, 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> . Contracts awarded via the Council's electronic tendering system are automatically notified to Contracts Finder.
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



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 category 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 more suppliers which establishes the terms) 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 details the specifics of the actual requirement. The framework will determine how the call-off should be administered and managed.
Gateway (in project)	A milestone in a project where formal approval is given to move to the next stage.
Grant	A grant is where the Council is not contracting for a service that it might otherwise have delivered itself. Rather it is offering financial support in an area of work, designed and proposed by another organisation, which it wishes to sponsor. The work to be carried out by the other organisation would be deemed to add value to the council's overall aims or objectives.
Public Contract Regulations (PCRs)	UK Government's codified regulations of the EU Procurement Directive. Reference to the PCRs means any version of the PCRs past, present and future.
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 Orbis 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
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, works and services that go into delivering a given finished supplies or service.
Tender	The procurement process of inviting and evaluating sealed bids from people and organisations to provide goods, works or services.
OJEU	Official Journal of the European Union where all notices relating to contracts over European threshold values are placed.