



Procurement Standing Orders

Rules to be used when spending council
money

October 2013

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1 Introduction

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

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.

1.1 Key Principles

Procurement Standing Orders:

- have been written to reflect best value, to empower staff to develop ideas, and deliver improved and innovative services
- describe the minimum corporate standards necessary for good governance in the letting of contracts by the County Council
- apply equally to anyone acting on the Council's behalf – including ESCC staff consultants and contractors
- are supported by a series of best practice documents, referred to at the end of each Procurement Standing Order, as appropriate
- provide the necessary delegated authority to Lead Cabinet Members and Chief Officers to make decisions on behalf of the Council.

1.2 Supporting Principles

Where there is a difference between the two; National and/or European Union legislation governing contract procedures override these Procurement Standing Orders and must be complied with.

The Council supports sustainability and social value objectives, encouraging local small businesses in East Sussex.

Throughout this document there are core rules and guidance. Procurement Standing Orders are coloured **in purple and highlighted in yellow** for extra clarity.

1.3 Compliance

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 East Sussex 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 key where spend and/or risk is high

- **Everyone who purchases on behalf of the Council must comply with these Procurement Standing Orders at all times.**
- **Schools must comply with their own Procurement Standing Orders and separate guidance is provided which sets out how they do this.**
- **Contracts must not be artificially separated (by cost, geography etc.) in order to avoid these orders applying at any level.**
- **The Procurement Standing Orders cover compliance with relevant legislation, the requirements for placing public notices (advertisements) and possible exemptions from having to do so.**
- **Subject to Procurement Standing Order 7.5, Chief Officers must comply with these Procurement Standing Orders every time they intend to enter into a contract on behalf of the Council.**
- **Any related Codes of Practice, including Procurement Codes, must be adhered to. These are set out in Appendix B.**

The table overleaf looks at all of the spend limits around contracting to show what processes must be followed and also what amount of time to allow to complete the process.

1.4 Summary Table – Process for finding new suppliers at each threshold level

Aggregate value	How many quotes are required?	How should you approach the market?	Who leads Market Search?	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?	How much time should be allowed to carry out process
£0 to £14,999	One written quotation	Email / Call Supplier Obtain best price Use Select List if appropriate	Service Manager (Category Specialist if required)	No, obtain best price only required Check the Market Place and select company	ESCC Standard Terms (see ESCC website) Raise a Purchase Order referring to the quotation	Assistant Director or equivalent/ Budget Holder	Budget Holder takes responsibility for spend at this level (may not be a contract)	2 weeks minimum
£15,000 to £99,999	Minimum of Three written Quotes	Invitation to Quote (to at least 3 companies) Use Select List if appropriate	Category Specialist & Service Manager	No, Invitation to Quote (to at least 3 companies) Use Select List or framework if appropriate	Use Standard ESCC Quotation Documents set for Contracts	Contracts Must be formalised in writing and signed by the Assistant Director or equivalent	Contracts Must be formalised in writing and signed by the Budget Holder	6 weeks minimum
£100,000 to EU Limit: £173,934 (goods and services) £100K to £4.3M (works)	(follow ESCC PSO tender process)	Issue Invitation to Tender following ESCC Procurement Standing Orders	Procurement	Yes, via SEBP & for EU for 30 days or as determined by Procurement and regulations	Standard contract approved by Legal services including Contract Conditions	Assistant Director or equivalent, Head of Procurement and Legal Approval	Head of Procurement and Legal Services signatures required	6 months minimum
Over EU limit* Over £173,934 (goods and services) Over £4.5M (works)	OJEU Tender Process *Part B will be exempt from OJEU	Issue Invitation to Tender or Negotiate via European Procedures	Procurement	Yes, via SEBP & OJEU for 30 days or as determined by Procurement and regulations	Standard contract approved by Legal services including Contract Conditions	Chief Operating Officer, Lead member & Legal Approval	Head of Procurement and Legal Services Signatures required	6-12 months depending on complexity of requirement minimum

Note – the values above are the TOTAL Contract value for the full contract period, not the annual value.

The above table sets out the minimum actions based on spend, but high risk projects and contracts may require additional work

2 Scope and Exemptions

Apart from the exemptions 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).

There shall be exempted from the provisions of the Procurement Standing Orders, but not from the requirement to seek best value, the exemptions are listed below - these are managed by separate policies:

Exemptions	Relevant Policy/Law
Contracts for the acquisition or lease of land and/or real estate	Managed via Property and Capital Investment
Any individual contracts for permanent or fixed-term employment	HR/Recruitment Policies
Non-trade mandatory payments to third parties, such as insurance claims, pension payments, payments to public bodies below the EU procurement regulations threshold	These are not subject to competition due to their nature
A declared emergency authorised by the Emergency Planning Officer. This would always be something that was externally based and not the fault of East Sussex County Council.	The Civil Contingencies Act 2004
Any contract relating to the engagement of counsel or other legal specialists	All Legal services come under Part B of the EU Procurement Regulations
Any contract of insurance below the EU procurement regulations threshold	

3 Role and Responsibilities

East Sussex and Surrey County Councils have a shared partnership approach to Procurement, and work closely together to achieve their saving goals. We have one Head of Procurement across both Councils.

The **Head of Procurement** is responsible for the Procurement process across all departments. Any procurement developments require the approval of the Head of Procurement or an authorised delegate. The Head of Procurement is responsible for:

- Providing expert market knowledge to help you find the best supplier to meet specified needs
- Managing and executing all tenders and contract awards over **£100,000**
- Providing advice and support up to £99,999 where tenders are complex and/or risky
- Engaging colleagues from Finance, Legal and HR in all contract strategies and awards
- Developing strategic action plans for each category of spend
- Taking a commercial lead on all strategic or critical contracts and relationships with suppliers
- Ensuring that good practice contract management is written in to agreements with our strategic and critical suppliers
- Developing our supply chain to deliver performance improvements
- Managing a master database on SAP of suppliers that you may use
- Full Category Management including checks on business critical contracts
- Ensuring transparency over spend, contracts and contract opportunities
- Embedding sustainability and social value across the supply chain
- Working closely with the Business Community to ensure effective purchasing practice

Anyone who purchases from external suppliers is responsible for:

- Following these Orders
- Checking there is adequate budget available
- Involving Procurement at the earliest opportunity when there is a need for a new supplier
- Ensuring technical specifications meet the defined need
- Ensuring specifications take into account equality and diversity as well as social value implications, and carrying out Impact Assessments where appropriate (these are mandatory for new contracts for services over £500,000)
- Putting in place effective monitoring of the performance and management of contracts

4 Transparency (CSO3 Public Notice and Short listing persons invited to bid)

The Council must ensure that, where proposed contract, irrespective of their estimated value, might be of interest to potential candidates located in the member states of the European Union, a sufficiently accessible advertisement is published.

All Contracts over the EU limits are advertised in the Official Journal of the European Union in addition to the Business Portal.

The Head of Procurement should make the professional decision on advertisements based on their business knowledge.

Without prejudice to the above requirement, and subject to Procurement Standing Order 4.0 the Council requires the following approach to the placing of advertisements:

4.1 Public Notices

Public notice is required to be found on/in:

a) the Council's website;

All invitations to tender with an estimated value exceeding £100,000 for goods, services or works, must be advertised on the Council's website using the Council's official electronic public notice service (South East Business Portal) or equivalent service.

b) trade newspaper or journal;

If considered appropriate to stimulate market interest, invitation to tender may be advertised in a relevant trade newspaper or journal likely to be read by persons undertaking such contracts

c) Local press

Periodically the Head of Procurement shall place an advertisement in a local newspaper, containing or referring to information in respect of contracts which the Council is intending to tender.

d) Official Journal of the European Union

If required under the EU Procurement regulations a public notice of tender must appear in the Official Journal of the European Union (OJEU).

Tenders are normally invited from all suitable persons who have indicated a wish to tender. The relevant Chief Officer makes the final decision on who is and isn't invited to tender from the list of suitable persons who have indicated that they would like to tender.

Public notice is not required where:

- a) a properly advertised Select List is in place;
- b) when the Chief Officer responsible for the contract, the relevant Lead Cabinet Member, the Chief Operating Officer and the Assistant Chief Executive, decide that the goods or services to be supplied or the execution of works are of a specialist nature, and only a limited number of suitable organisations will be able to supply the requirement, in which case a waiver form should be completed and authorised;
- c) when the Chief Officer responsible for the contract, the relevant Lead Cabinet Member, the Chief Operating Officer and the Assistant Chief Executive, decide that there is only one person who can properly supply the goods or services or execute the works;
- d) where goods, services or works are obtained from a consortium or framework agreement of which the Council is a member or to which it has access, approved in accordance with Standing Order 7.5; or
- e) when the Chief Officer responsible for the contract, the relevant Lead Cabinet Member, the Chief Operating Officer and the Assistant Chief Executive, decide that full tendering is inappropriate because of the developmental or trial nature of the goods, services or works to be provided.

4.2 Freedom of Information

Under the Freedom of Information Act 2000, we have an obligation to publish specific information in the public domain. If you are arranging contracts, you must ensure you include the appropriate contract terms into the contract, in line with our Freedom of Information requirements. Queries on Freedom of Information and Data Protection should be directed to your Freedom of Information and Data Protection Officer located in each department.

4.3 Developing 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, and provides information and support via dedicated websites and through supplier events.

4.4 Conflict of interest

Our market searches, procurement and purchasing must be carried out free from any conflict of interest to support our transparency objectives. In other words, we need to be sure that anyone involved in the setting up of contracts does not have an interest in a supplier that would make them biased to the decisions being made.

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

Staff, contractors and consultants operating on behalf of East Sussex County Council are all required to comply with the *Code of Conduct & Conflict of Interest Policy*

5 Sustainability and Social Value

The Social Value Act 2012 places an obligation on East Sussex County Council in respect of proposed contracts for services over the EU threshold, .at the pre-procurement stage to consider how what is to be procured may improve the social, environmental, and economic well-being of its area, and how we might secure any such improvement and to consider the need to consult.

The pre-procurement stage to consider how what is to be procured may improve social, environmental and economic well being of the relevant area, how they might secure any such improvement and to consider the need to consult.

Our Procurement approach covers these areas:

Economic Sustainability – we aim to purchase goods, works and services which enhance the local economy of East Sussex. 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.

Environmental Sustainability – we aim to purchase goods, works and services which minimise our carbon footprint, encourage a positive impact on the environment, and have the best value costs and benefits considering their whole life cycle.

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 of Opportunity and Diversity Policy.

Procurement must evaluate Social Value as part of the tender award criteria for all contracts exceeding the EU thresholds. Procurement ensures that our practice is aligned with the Council's policies in this area.

East Sussex County Council demonstrates its commitment to helping young adults to secure their first step into sustainable employment by continuing to offer excellent opportunities within our workforce. With a well-established programme of work experience and apprenticeships, we recognise that we have a responsibility to young people in the county who might struggle to make a successful transition from education to employment, in particular our Looked After Children and young people leaving care.

As such, the opportunities for placements are often integrated into East Sussex Contracts. More information can be found on this in our Employment and Skills through Procurement Policy

Questions around quality and diversity may be directed to the Equalities Manager.

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6 Buying via existing contracts or Select/Approved Lists

6.1 Using the ESCC Contracts Register to find an existing supplier

Once you have established a need for goods, services or works, you need to determine if there is already an arrangement in place to supply them.

If you have identified a suitable supplier on the SAP system or ESCC contracts register, you must not make verbal commitments until you have raised a Purchase Order via your SAP R3 Buyer. You must also ensure that the contract that exists already is suitable for the new requirement.

At the point of Purchase Order approval, the Council has given its authority for the service to be procured, and this officially occurs on the date the Purchase Order is raised.

It is not acceptable practice to raise an order retrospectively – which means you should raise the Purchase Order before the invoice arrives from the supplier (the dates of each should reflect this). 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.

There are some pre defined emergency situations where a retrospective order is unavoidable and these include:

- a) The need to secure East Sussex County Council property when there has been a break in or failure (such as flood)
- b) The need to arrange for emergency care, such as for a child and parent where they are at risk of physical harm

6.2 Tendering and Contracting (CSO 4 Select lists)

Select lists are lists of approved suppliers who carry out building and construction works. They also cover providers of various services for the Adult Social Care Department.

If there is a formal framework agreement in place for the requirement you have, then you can consider using the framework as an alternative to select lists.

When the Chief Officer and lead Cabinet Member decide that a select list of approved suppliers needs to be set up, notices inviting applications for the list must be published in accordance with the requirements set out in Standing Order 4.0.

This must happen at least four weeks before the list is compiled or reviewed. In addition, each person already included on any relevant list shall be asked whether they wish to remain on it.

Each list must be re-advertised at least every five years. Any necessary updates (such as adding or removing suppliers) may be made in between where approved by the appropriate Chief Officer.

The appropriate Chief Officer needs to specify in writing the criteria for admission to and suspension and exemption from each list, and the selection for work from the list.

If the Council is entering into a contract for which an appropriate list already exists, the appropriate Chief Officer must send a written invitation to at least three persons from the list for that work to submit a tender. If less than three firms are invited to

tender, then the appropriate Chief Officer must keep a record of the reasons for this with the project file.

After consultation with the relevant Lead Cabinet Member, the Chief Officer responsible for the contract may subscribe to and use an external vetted electronic supplier database as an alternative to the Council maintaining its own select list, subject to protocols issued by the Assistant Chief Executive from time to time.

6.3 Exemptions

In the case of a select list of residential care homes or nursing homes registered under the Care Standards Act 2000 and regulated by the National Care Standards Commission, the Director of Adult Social Care is not required to invite tenders provided that:

- a) ordinarily the payments to be made under the contracts for the provision of such services do not exceed the maximum weekly amounts for the different client groups/type of care as agreed by the relevant Lead Cabinet Member, including individuals or groups with specialist care needs;
- b) in entering into such contracts the Director of Adult Social Care, considering client/carer wishes, locality, availability of places/services, spreading of business between registered providers, and other relevant factors, endeavour to contract with the registered provider providing such services at the lowest cost;
- c) where (i) the Director of Adult Social Care is reasonably satisfied that there is only one approved supplier of such services due to the specialist care required or (ii) there is more than one provider of such specialist care and quotations have been received from at least two of them, he may authorise a contract in excess of the maximum weekly amount set in accordance with Procurement Standing Order 6.3c).

In the case of a select list of approved providers of home (domiciliary) care services, the Director of Adult Social Care is not required to invite tenders in accordance with Procurement Standing Order 6.3 provided that:

- a) the payments to be made under the contracts for the services do not ordinarily exceed the maximum weekly amounts for the different client groups for domiciliary care as agreed from time to time by the relevant Lead Cabinet Member;
- b) except where there is only one approved provider, the Director of Adult Social Care obtains quotations from at least two of the approved providers of such services and contracts with the approved provider providing the services required at the lowest cost;
- c) where the Director of Adult Social Care is reasonably satisfied that there is only one Approved Provider of such services due to the specialist care required, he may authorise a contract in excess of the maximum weekly amounts set in accordance with Procurement Standing Order 6.3 a) above, and without having to obtain quotations.

6.4 Using select list and frameworks

After consulting with the relevant Lead Cabinet Member, the Chief Officer responsible for a select list may decide that a framework agreement would offer better value. If this is the case, then the use of the select list can be discontinued and a framework agreement can be set up for the requirement. This must be done using an appropriate tender procedure.

For more information on Frameworks, see also the chapter on Frameworks

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7 Finding and Contracting with New suppliers

7.1 The Cost of a contract

In order to define the contract amount to apply these Procurement Standing Orders, the cost of a contract is the estimated total value payable by the Council to the supplier over the term of the contract, including allowable extensions. In the case of indefinite contract periods, the term of the contract is assumed to be four years.

For example – a contract for two years with one 12 month extension would mean working out an annual spend across a three year period. If the annual spend were £30,000 in this case, the total contract value would be £90,000.

The summary table at the beginning of this document sets out the different approaches for each financial threshold value above and below which competitive quotations or tenders are normally required. These rules apply as a minimum actions based on spend levels, but high risk projects and contracts may require additional work.

The summary table in 1.4 shows whether it leads to a formal contract or a contract formed by placing a purchase order. It sets different thresholds for different values.

It is not just the value that defines the need for a formal contract process. Both the elements of money and risk need to be considered to make the final decision. So if East Sussex County Council are exposed to significant risk in any way from the contract being considered, a more formal route should be taken.

Examples of significant risk are where the use of a contract might mean the Council is subject to PR risk or increased H&S risk, or where there is a risk to business continuity, because business critical systems are being contracted.

7.2 Using Purchasing Cards

East Sussex County Council uses Purchasing Cards (P-Cards) as an alternative means of ordering goods and services. It is imperative that the correct level of governance is in place for P card usage. P cards provide a swift and effective route to market where there is already an established system for managing spend (for low risk, low spend goods or services).

Please also see the East Sussex County Council Purchasing Card Policy

7.3 Approval for Consultant/Supplier Engagements

Definition

Under the ESCC Consultancy Code, consultancy is defined as having the following characteristics:

- The work is project-based;
- Responsibility for the final outcome rests with the client.

There are restrictions on the use of consultants and these are outlined in the External Consultancy Code of Best Practise. This code must be followed when engaging with external consultants.

7.4 Intellectual Property Rights

If arrangements include Intellectual property of East Sussex then the relevant standard contract clauses must be included.

7.5 Collaboration and the use of frameworks and consortium agreements

Collaboration, frameworks and consortium agreements may be used where the Head of Procurement is satisfied that:

- (a) the arrangements are properly set up or constituted;**
- (b) any necessary legal provisions and risk assessments have been complied with, and;**
- (c) the terms and conditions of such an arrangement are those most economically advantageous to the Council.**

The relevant Chief Officer makes the final decision on the route to market based on the advice received from Procurement.

The Council may choose to use consortium agreements let by other public bodies where they are relevant and practical. Where Procurement decides that an existing consortium agreement can satisfy the business need then the requirement doesn't need to be advertised.

Legal Services Team must agree that; to the best of their knowledge the original agreement:

- (i) was tendered in accordance with the Public Contracts Regulations 2006 for the potential use by the Council,
- (ii) is in the interests of the Council and
- (iii) contains conditions of contract acceptable to the Council.

However, the contract is still subject to the contract award sign off procedures and requirements.

The Council may also chose to award framework agreements, or use framework agreements awarded by other public sector bodies such as the Government Procurement Service (GPS). A framework agreement is a general term for an agreement with suppliers that set out terms and conditions, under which specific purchases, or call-offs, can be made.

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 Procurement Team can provide advice on all aspects of the operation and use of framework agreements

8 Use of Frameworks

8.1 Definition of a Framework:

A framework is an agreement or other arrangement between one or more contracting authorities (CA) and one or more suppliers which establishes the terms governing contracts that may be awarded during the life of the agreement. In other words, it is a general term for agreements that set out terms and conditions for making specific purchases (call-offs).

Its purpose is to procure works, services or goods where the Council does not know the exact quantity or timing of its requirements but has an on-going need.

Within the Council, frameworks are used commonly within the Property department, but do exist elsewhere.

When the framework is set up, 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.

8.2 Setting up frameworks

The initial set up of any framework is subject to the Procurement Standing Orders, including all the sign off and rules processes that form part of the Framework.

8.3 Operation of frameworks

Frameworks have their own distinct rules which are agreed as part of the set up process. Following this, the individual framework rules take precedence over the Procurement Standing Orders, which allows for things such as the use of different number of suppliers, standards and sign off levels for individual call offs.

9 Procedures leading to award of Contracts

Procurement can help you choose which one of these routes is right for you and your need.

9.1 Spend up to £14,999

For contracts for works, goods or services (including consultancy) with an estimated cost up to £14,999, the appropriate Chief Officer must obtain a single written quotation (or more than one where practicable) or place an order with a contractor under a framework agreement or use a consortium, 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.

9.2 Spend £15,000 to £99,999

In the case of contracts with an estimated cost greater than £15,000 and not exceeding £99,999, the appropriate Chief Officer must obtain at least 3 written quotations, or use an approved framework agreement or use a contract set up by an approved Consortium, where such arrangements have been put in place by the Council.

If 3 quotations cannot be obtained due to lack of suitable persons prepared or able to quote (where the market has been tested), the then a Waiver form should be prepared and signed off.

Where a select list exists, the quotations must be obtained from approved suppliers on the select list.

In seeking quotations a Chief Officer must have regard to any guidance issued from time to time by the Chief Operating Officer.

Faxed or emailed quotations are acceptable.

9.3 Spend over £100,000

Contracts with an estimated value exceeding £100,000 must be let by competitive tender, using the appropriate procedure (save for the exemptions provided under 2 Scope and Exemptions);

Where the estimated value of the Contract is in excess of the relevant EU threshold, the procedures under the EU procurement regulations must be followed.

Note: If the aggregate spend with a supplier is expected to exceed a higher threshold over time then you must use the appropriate sourcing approach as set out in Summary table at the beginning of this document.

9.4 Above EU threshold

From 1 January 2012, the EU threshold for supplies and services is £173,934 (excluding Part B services, and R&D, and certain telecom services and subsidised services) and for works is £4.3M (excluding subsidised works) [goods, services and works being as defined by the EU procurement regulations].

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

9.5 Tendering procedures table below

- open procedure – also known as two stage process, which has a pre-qualification section and then moves to a full tender process. The whole process takes several months to complete.
- restricted procedure – also known as a one stage process, this just uses a full tender process with no pre-qualification.
- negotiated procedure – is a more unusual method where the market is engaged directly in dialogue (potentially with more than one supplier) in order to successfully engage a supplier. Timescales are variable because of the nature of the procedure.
- competitive dialogue procedure – this method is used where the requirement is very complex and cannot be clearly defined up front by the Council. The timescales are very variable but allow for several rounds of dialogue with potential suppliers.

In addition, there are three specialist procedures that can be deployed in conjunction with the above. These are:

- framework agreements,
- dynamic purchasing systems,
- electronic auctions

The Chief Officer, in consultation with the Assistant Chief Executive decides on which procedure to follow based on considered recommendation from the Head of Procurement. If they decide to use the competitive or negotiated procedure then they are required to seek sign off from the Lead Cabinet Member. Procurement would be involved in all EU regulated procedures because of the value of them and are always available to support and advise on the best procedure to fit the requirements of the Council.

9.6 Gateway process of Procurement

If the aggregate value is over £100,000 then the Gateway process must be followed:

Gateway Zero – internal Procurement element to identify pipeline projects agreed at strategic level with senior Service Managers as part of the business planning process.

Gateway One – Initiate – where the requirements are confirmed and work begins on the Strategic planning

Gateway Two – Formal Approval – where Finance agree budgets and Assistant Director or equivalent agree the route to market

Gateway Three – Implement – where the resulting contract/framework is awarded

Gateway Four – Handover and close – where the contract is mobilised and ongoing responsibilities are identified and implemented; including contract and supplier management via the Contract Management plan

10 Procedures leading to opening of tenders

10.1 Delivery opening and recording of tenders

Quotations and tenders with a pre-valuation of £99,999 or less may be delivered to and opened by the Chief Officer responsible for the contract, with at least two people being present. Wherever practicable, the best practice procedures outlined below should be followed for tenders under £100,000 as well.

For tenders over £100,000, all tenders must be recorded.
Each Invitation to Tender (ITT) must state:

- a) that tenders should be delivered in a sealed, plain envelope addressed to the Assistant Chief Executive, and bearing the words "Tender for " and the title of the contract, but without any name or mark indicating the sender or received electronically in a designated format; and
- b) that the Council does not bind itself to accept the most economically advantageous tender or lowest cost tender, or indeed, any tender

East Sussex County Council uses both electronic and paper tender processes.

10.2 Paper based tenders

Paper based tenders will remain unopened in the custody of the Assistant Chief Executive until the time appointed for their opening.

All tenders will be opened together after the end of the time for tendering by one senior officer nominated by the Assistant Chief Executive, and another officer. Such officers will be independent from the department tendering the contract

10.3 Electronic tenders

Electronically received tenders will remain in their unique, secure electronic state until the time appointed for their opening

Any electronic tendering must conform to any protocols issued from time to time by the Chief Operating Officer, Business Services Department and the Assistant Chief Executive.

For electronic tenders a secure, auditable electronic record showing the identity of the persons opening the tender, and the date of opening shall be added to the tender file.

Any tenders received after the end of the time for tendering or which contravene any provision of these Procurement Standing Orders or any applicable tendering conditions or instructions will only be opened with the authority of the Assistant Chief Executive after consultation with the relevant Lead Cabinet Member.

The electronic central register of contracts over £100,000 entered into by the Council will be kept by the Chief Operating Officer, Business Services Department. The register shall include for each contract, such information as is required from time to time by the Chief Operating Officer, Business Services Department.

11 Waiving of Procurement Standing Orders

Sometimes it is necessary to obtain goods, services or works without using the Procurement Standing Order process and the method for doing this is outlined below. Not using the Procurement Standing Order process still requires the submission of a form, and approval of the waiver form.

Proposals to waive the requirement to comply with the Procurement Standing Orders may be approved by the Cabinet, or the relevant Lead Cabinet Member, or a Chief Officer, after consultation with the relevant Lead Cabinet Member, following consideration of a waiver request form. The requirements for the request are:

- (a) the request is compiled after consultation with the Head of Procurement and the Assistant Chief Executive;
- (b) the request is issued setting out the Procurement Standing Order(s) being waived;
- (c) the request includes legal and financial comments and highlights as necessary, any future commitment (whether of a financial character or not) which the contract may entail; and
- (d) the request justifies the method of selection of supplier so that value for money and compliance with EU procurement Regulations and domestic law can be demonstrated.

11.1 Waiver Sign Off

The waiver form is used in all situations where the Procurement Standing Orders are not followed.

All waivers require sign off from both Procurement and Legal prior to consultation with the relevant Lead Member.

12 Finance and Risk

12.1 Grants

Grants are awarded to us in order for projects or services to be carried out. They are usually conditional upon certain requirements such as meeting stated criteria or delivering particular outputs or achieving outcomes and come from a variety of sources. We also give grants out to other bodies in order for work to be carried out.

Regardless of the source of the money we receive, the same Procurement rules apply to money that is spent by the Council.

12.2 Using grant money

If you are involved in bidding, i.e. if you are:

- leading an application to an awarding body (Trust, Government Department, national or international funding body) with or without partners from other sectors/departments

OR

- a partner in a project application to an awarding body (i.e. you will contribute staff time, match-funding, resources or management expertise to the implementation/delivery of the project)

OR

- allocating financial resources to another organisation which they will either use as match funding towards a project application or as total funding for the project.

You need to ensure that Procurement rules are adhered to by yourselves and/or partners you work with. You will also need to ensure that your project follows the Corporate Funding Protocol rules.

Do make sure that you are familiar with the funder's requirements which might request additional processes to ours.

12.3 Liability and Security

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

We normally look for relevant levels of cover for Public Liability Insurance 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 Insurance and Risk Management Team within the Assurance Team. The agreed level of insurance should be recorded in the contract file.

12.4 Risk Management/Mandatory Contract Conditions

Contracts come into the Council that include commercially sensitive data and it is essential that it is handled in the correct way.

Each contract involving the handling of sensitive or confidential data or over £100,000 must contain mandatory contract conditions as specified by the Assistant Chief Executive, unless exempted from doing so by the Assistant Chief Executive.

Supporting documents; *Standard/Mandatory/Supplementary Contract Conditions*
See also *Freedom of Information Staff Guidance Document*

12.5 Capital budgets

In order to seek new goods or services (or works), you need to ensure budget is available first.

In the case of contracts to be financed from capital, authority to accept a tender is subject to any necessary Government approvals and borrowing authorisations having been received and the relevant Chief Officer being satisfied that the tender is within the department's capital programme budget.

Significant variations of proposed spend **must** be reported to the relevant Chief Officer. In the case of building works, before accepting the tender the Chief Officer **must** take appropriate professional advice in accordance with guidelines, including requirements to comply with corporate property requirements.

12.6 Revenue Budgets

In the case of works or services or the supply of goods or materials to be financed from revenue, all contracts and agreements must be covered by an approved revenue budget at the date of award. When contracts have duration of more than one financial year, Chief Officers must ensure that the costs stemming from such arrangements can be accommodated within the estimates for the current and future years.

12.7 Financial Security

The Head of Procurement with support from 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 then the Supplier will need to be checked.

Company appraisals are also required where East Sussex gives out grants to another body. Please refer to the Corporate Funding Protocol for more information.

The Chief Officer has responsibility for signing off the level of risk as acceptable after conducting a financial appraisal and this must be agreed with the Legal and Financial Services.

Where financial risk is acknowledged, 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;

OR

- a Director's Guarantee or Personal Guarantee where finances prove acceptable;

OR

- a Performance Bond, retained funds or cash deposit;

OR

- any other security 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. The Head of Procurement provides advice on the most appropriate additional security should be used.

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13 Evaluation

13.1 Evaluation

Tenders over £100,000 are evaluated by the Head of Procurement and the relevant business team based on the identification of the 'Most Economically Advantageous Tender (MEAT)'.

Where written quotations are invited for contracts valued under £100,000, MEAT should also be used, but if no clear criteria are specified, then the assessment would be made based on price.

For contracts valued at £100,000 and over and for all contracts governed by EU procurement regulations, a tender evaluation procedure based on the identification of the most economically advantageous tender ("MEAT") should be used, unless the Chief Officer responsible for the contract determines that a tender evaluation based on lowest cost is more appropriate.

13.2 Acceptance of Tenders

Subject to the provisions of this Standing Order, the relevant Chief Officer can accept the most economically advantageous tender, or the lowest cost tender, where such a contract award criterion is being used.

The Head of Procurement will maintain a record of tenders over £100K accepted and amendments agreed by Chief Officers under the powers given to them by these Procurement Standing Orders.

On being provided with details of errors of arithmetic discovered in his or her tender, a tenderer is allowed:

- (a) to confirm without amendments or withdraw his or her offer before any tender for that contract is accepted; or**
- (b) to amend his or her offer in order to correct those errors.**

This can only happen with the approval of the Assistant Chief Executive and after the date fixed for receipt of tenders but before acceptance of tenders.

Clarification

Following receipt of tenders, the relevant Chief Officer may wish to clarify or negotiate with the preferred bidder, that is, the one submitting the most economically advantageous tender (or where applicable the lowest cost tender if that award criterion is being used), or in the case of a single tender, the only bidder. These clarifications or negotiations are to obtain improvements in terms of price, delivery or content and are subject to the following requirements:

a) any discussions must not alter the original specification unless the relevant Chief Officer considers that special circumstances exist that can be substantiated and recorded; and

b) any discussions after receipt of formal tenders and before the letting of a contract must have the authorisation from appropriate Chief Officer. In accordance with the arrangements approved by the Assistant Chief Executive. Any agreed amendments must be put in writing and signed by the tenderer.

Please note that negotiations are not permitted within some of the EU procedures, and Procurement can advise on this.

14 Awarding and Managing Contracts for best value

Contracts need to be formally signed off by the relevant parties before they are used.

Contracts should always be in writing.

Every contract for more than £100,000 in value must be in a form approved by the Head of Procurement and Assistant Chief Executive and will either be:

- a) sealed with the common seal of the Council; or
- b) signed on behalf of the Council by the Assistant Chief Executive and another officer authorised in writing by him or two such officers authorised in writing by the Assistant Chief Executive.

For contracts under £100,000 the relevant Chief Officers sign.

Electronic signatures are allowed to be used to sign off contracts in line with the Electronic Signatures Regulations 2002 provided that the sufficiency of the security arrangements have been approved by the Chief Operating Officer, and the Assistant Chief Executive

Before awarding a contract or concluding a framework agreement, which is subject to the EU procurement regulations and above the relevant threshold, the Chief Officer shall consult with the Assistant Chief Executive.

Goods, Services and Works that are procured using exemptions still require award sign off and formal recording as set out above. For clarity, these are:

Exemptions	Relevant Policy/Law
Contracts for the acquisition or lease of land and/or real estate	Managed via Property and Capital Investment
Any individual contracts for permanent or fixed-term employment	HR/Recruitment Policies
Non-trade mandatory payments to third parties, such as insurance claims, pension payments, payments to public bodies below the EU procurement regulations threshold	These are not subject to competition due to their nature
A declared emergency authorised by the Emergency Planning Officer. This would always be something that was externally based and not the fault of East Sussex County Council.	The Civil Contingencies Act 2004
Any contract relating to the engagement of counsel or other legal specialists	All Legal services come under Part B of the EU rules

Any contract of insurance below the EU procurement regulations threshold	
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All contracts, including where variations or amendments have been made, must be registered and maintained by The Head Procurement.

All original signed contracts over £100,000 must have a completed summary contract certificate and be stored in a secure fireproof location by Procurement or scanned and saved electronically. 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 from within the Council, recorded on the contract certificate and on the contract management system.

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.

The arrangements for contract signature are shown in the Summary table at the beginning of the document. All contracts over £500,000 (and specialist standard contract suite documents such as JCT, NEC and ESCC custom short form contracts over £100,000) must be sealed as a deed, via Legal Services. These arrangements include amendments and extensions and the aggregate value of the contract determines the signatory requirement.

14.1 Remedies Directive

If a successful challenge under this Directive is made after a contract has been awarded the Court could order the contract to be ineffective. This means that the contract will be cancelled and an alternative method of delivering the service will have to be found. This could result in significant costs to the Council, but if the appropriate standstill periods are correctly applied the Council will be able to minimise the risk of any challenge. The Head of Procurement is responsible for ensuring the correct contract award processes are followed, including observing a standstill period and publishing an Award Contract Notice for all contracts over OJEU thresholds.

14.2 Mobilisation of new contracts

New contracts require time to mobilise and take effect. Sufficient time should be allowed for contract handovers – including details of moving from one supplier to another.

It is the Contract manager's responsibility to ensure all necessary preparation is completed before contract goes live. This will typically include raising purchase orders, supplier set up etc.

For more information see the Contract Management Guide

14.3 Contract Extensions/Amendments 14.3

Extensions to the contract period are often defined by the original public notice or the contract itself. Any other extensions may be approved by the responsible Chief Officer where best value to the Council has been demonstrated. The Chief Officer must consult with the relevant Lead Cabinet Member, the Chief Operating Officer and the Assistant Chief Executive. This requirement applies to all contracts above £15,000.

A Chief Officer may approve the novation of a contract to a new supplier if they are satisfied as to the financial standing and the technical competence of the proposed new supplier, and after consulting with the Chief Operating Officer and the Assistant Chief Executive.

Specialist standard contract suite documents such as JCT, NEC and ESCC custom short form contracts have their own pre-defined contract extension arrangements.

14.4 Contract Variations

A contract may only be amended (or varied) if the contract permits such a variation and is allowable under the EU Procurement Regulations. The agreement of Assistant Chief Executive and the Head of Procurement is required. The amendment (or variation) must be evidenced in writing and signed. The amendment must then be recorded and retained with the original contract.

Requests to extend or amend contracts must be discussed with the Head of Procurement. 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 for supplier diversity in the specification and consider if this needs updating to meet current needs.

Specialist standard contract suite documents such as JCT, NEC and ESCC custom short form contracts have their own pre-defined contract variation arrangements.

14.5 The management of critical and strategic contracts

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

Commercial elements include pricing and all external market factors.

For all contracts, the Contract Manager is responsible for day-to-day operational delivery of contract management. Procurement will provide support where performance failure is demonstrated and ensure best practice guidance and frameworks are communicated.

All strategic and critical contracts must have a written business continuity plan, to be held as part of the Contract Management Plan (all contracts over £100,000). Some contracts are critical but are valued at under £100,000 and this is decided based on the nature of the contract by Procurement and the Service Manager.

As part of the Procurement Category Management processes, business critical contracts have annual health checks to ensure their on going suitability for our needs.

14.6 Nominated Sub-Contractors and Suppliers

East Sussex County Council needs to ensure that where sub contractors are used to deliver contract services, their behaviour matches what we'd expect from our direct contractor.

This Standing Order only applies where a sub-contractor or supplier is nominated to carry out work on behalf of a main contractor.

Where the estimated cost of the sub-contract or of the goods or services to be supplied by the sub contractor supplier are £100,000 or more, tenders will be invited unless the appropriate Chief Officer gives approval not to do so.

The Chief Officer must invite at least three tenders for the nomination. The terms of the invitation shall require an undertaking by the tenderer that if selected the sub-contractor, or supplier, will be willing to indemnify the main contractor against the sub-contractor's, or supplier's, own obligations under the main contract in relation to the work or goods or services included in the sub-contract.

The Chief Officer must nominate to the main contractor the person who's tender or quotation is successful.

14.7 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.

14.8 Document Retention Periods

The retention of tenders and contractual documentation is prescribed in the Limitation Act 1980 and the Public Contracts Regulations 2006

All received Tenders & Pre Qualification Questionnaires 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 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.

14.9 Disposal of Goods

End of life disposal of goods is something that needs to be considered at the outset of the

process so it can be built into the specification and tender (as well as being allowed for within the costing model). Formal legal requirements should be considered here.

Refer to the relevant Disposal Policy

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15 Glossary of Terms

Definitions

Best Value	means the duty of the Council to make arrangements to secure continuous improvement in purchasing, striving for the optimum combination of economy, efficiency and effectiveness.
Contract	means a binding agreement made between two or more parties for the supply of goods or materials, or for the execution of any works or the provision of any services which is intended to be enforceable at law.
consortium	means two or more local authorities or public bodies acting jointly for the purpose of the purchase of goods, services or works.
Dynamic Purchasing System	means a completely electronic process for making commonly used purchases. The electronic process must meet the requirements of the contracting authority. The system should also be limited in duration and open throughout its validity to any economic operator which satisfies the selection criteria and has submitted an indicative tender that complies with the specification.
Electronic Auction	Otherwise known as a reverse auction. A process (usually carried out online), where bidders repeatedly drop their prices and/or new values of elements of their tender in order to win the work. This is normally done once all the bidders have met a minimum standard for the specification of the work, to ensure any of them would provide a suitable offering. Works well on goods that are comparable, such as stationery and cars.
EU Procurement Regulations	means regulations in relation to public procurement made pursuant to the European Communities Act 1972. The levels of spend involved are updated periodically.
Framework Agreement	means an agreement for a defined range of goods, services or works, the terms of which are agreed through an initial competitive tendering exercise. Under the framework, the supplier undertakes to enter into contracts for requirements called off as and when required.
Joint Commissioning	means where the Council jointly with one or more local authorities or public bodies enters into a contract.
Lowest Cost	in relation to a tender means the lowest price (if the Council are

	paying) and the highest price (if the Council are receiving payment). In either case, refers to a tender which conforms to the Council's tendering objectives.
Most Economically Advantageous Tender	means the most economically advantageous tender to the Council determined by criteria which may include quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after sales, technical assistance, delivery date and delivery period and period of completion.
Novation	means the substitution of a new contract for one already existing.
Person	The expression "person" or "persons" shall include a firm, partnership, company or public authority.
Quotation	means a formal offer to supply or purchase goods, or materials, execute works or provide services including consultancy at a stated price based on terms and conditions agreed with the supplier.
Select List	(sometimes also known as an approved list) means a list of suitable prospective suppliers approved for the purposes of the supply of goods or services or the execution of works in accordance with the specification laid out
Tender	means a formal offer to supply or purchase goods, or materials, execute works or provide services including consultancy, at a stated price based on the Council's terms and conditions.
Works	means a contract involving building or civil engineering activities whether in the form of a specific service or in the form of a series of services leading to the completion of a work that has an economic or technical function.

Unavailability of Lead Cabinet Member - where there is a reference to a Lead Cabinet Member and the relevant Lead Cabinet Member is not available, another Lead Cabinet Member may act.

The cost of a contract - for the purpose of calculating the thresholds under these Procurement Standing Orders, the cost of a contract is the estimated total value payable by the Council to the supplier over the term of the contract, including allowable extensions. In the case of indefinite contract periods, the term of the contract is assumed to be 4 years.

Interpretation – any dispute or difference as to the interpretation of Procurement Standing Orders shall be determined by the Assistant Chief Executive.

Chief Officer, the Head of Procurement, and the Assistant Chief Executive may delegate their functions under these Procurement Standing Orders to officers.

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Appendix B – Supporting documents and Policies

All these documents are available on the ESCC intranet

Tendering and Contracting Codes

Financial Regulations for Control of Contract

A- Z Schools finance (Czone)

Code of Conduct & Conflict of Interest Policy

External Consultancy Code of Best Practise

ESCC Purchasing Manual.

East Sussex County Council Purchasing Card Policy

Standard/Mandatory Contract Conditions Procurement Library.

Bespoke documentation from Property CRD or Contract Management Team, Communities, Economy and Transport

Freedom of Information Act – guidance and training

Employment and Skills through Procurement Policy

Freedom of Information Staff Guidance Document

Funding and Procurement from the Compact

Corporate Funding Protocol