

Best Practice For Contracts – Checklist

Procuring a New Service/Goods

1. **Have you read the most recent version of the Contract Standing Orders** which is available on the Council's intranet by searching for "Contract Standing Orders"? (Note that this document is currently under review and the new version will be published on the intranet in due course).

The procurement process you will be required to follow under the Contract Standing Orders will depend upon the value of the contract and the nature of the service.

By way of example, for contracts with a value of up to £35,000 you will need to seek a minimum of three quotes, having first had approval from your Executive Director or individual with delegated authority (as per the scheme of delegation for your Directorate).

Even if the value of the procurement is below the value which triggers the requirement to carry out a competitive procurement exercise under the Public Contracts Regulations 2015 (for which the updated [thresholds](#) now include VAT, so are in effect lower) you will need to refer to the Contract Standing Orders to establish whether a competitive procurement exercise is required.

It is not surprising that the higher the value of the contract, the more onerous the requirements under the Contract Standing Orders become in terms of who is required to authorise the procurement and the competitive process required (for example, a procurement for a contract estimated at a value of £1 million would require approval from the Executive, appropriate advertising and a formal tender seeking a minimum of five tenders, or use of an established framework agreement).

You are spending taxpayers money therefore think of it as spending your own money – very few people would buy a car or house without some research into what's available and how much would it cost.

2. **Who will sign the contract?**

Only an Executive Director is authorised to sign a contract of up to £400,000 unless it is the case that there is another individual who is authorised to sign under a scheme of delegation.

The Executive Director may sign contracts above the value of £400,000 and below £1 million once the approval of the relevant Executive Member has been obtained.

For contracts above £1 million for which the procurement was authorised by the Executive, further Executive approval is not required for the award of the contract unless the cost and scope connected to the contract award are outside that set out in the Strategic Procurement Plan. Where the cost and scope does not exceed the SPP, then the Executive Director (or other person with delegated authority) can sign having first consulted the Executive Member.

Always check the related Strategic Procurement Plan to see what was agreed regarding approval.

3. Does expenditure need to be recorded as a Key Decision?

Expenditure which exceeds £400,000 or has a significant effect upon the communities of two or more wards will need to be recorded as a key decision (please contact Legal Services if you have any queries regarding this).

4. Have you got a suitable form of contract in place which protects the Council's position?

The starting point should be that the Council's standard terms and conditions are used. The majority of external framework terms and conditions, such as Crown Commercial Services, are also acceptable but always check with Legal Services as these can be complicated.

However, there are some occasions when the Council's terms will not be appropriate and when it might be acceptable to use the terms of the provider if you are satisfied that the provider's terms adequately protect the Council's position. You must consult with Legal Services if you are proposing to use the provider's terms.

Points to check within a provider's terms include:

- a) ensuring that there is a full and proper description of the service/specification,
- b) there are performance measures in place and the Council is not required to pay for goods or services which are inadequate or fall below certain standards,
- c) that the cost is clearly stated and the provider does not have the right to increase the costs without the consent of the Council,
- d) that the Council has clear termination rights and the ability to terminate immediately for a serious breach or repeated breaches of the contract and that insurance/indemnity clauses are adequate.
- e) Finally, there should also be a clear process for exit and details arrangements as to handover as specific to the service.

5. Have you ensured that the Council will be compliant with the UK GDPR?

By using the Council's standard terms and conditions (and filling in details as appropriate) you will be likely to have protected the Council with regards to data protection compliance.

If you are using a contract which is different to the Council's terms and conditions, then you should compare the terms on data protection with those set out in the Council's terms and conditions – the ideal would be to require the provider to accept the data protection provisions from the Council's terms and conditions as these reflect a minimum standard required by law. If the supplier is not willing to sign up to such terms or ensure that their terms include the same points in relation to data protection, then you should consult our Data Protection Officer (Elise Battison) before entering into any contractual arrangements.

Please do not sign any contract sent to you by the provider unless you actually intend to enter into a contract on their terms.

Extending or Varying an Existing Service or Contract for Goods

1. Have you read the most recent version of the Contract Standing Orders?

Just as you are required to read and apply the Contract Standing Orders for a new procurement, the same applies when you are looking to vary or extend a contract.

2. Do you know who will sign the contract variation or extension?

Unless a person has delegated authority then it should only be the Executive Director who signs the contract variation or extension.

Check with your manager if in doubt and if there is still uncertainty then contact Claire Bradford in Legal Services.

3. Have you decided on how you will record the contract variation or extension?

It is not best practice to simply record the variation or extension by email. Instead a formal document should be used – please contact Claire Bradford in legal services if you are unsure about how best to document a contract variation or extension. There needs to be clarity on the terms which will apply for the duration of the variation or extension (including clarity on the service to be provided and associated costs).

4. Does the extension of variation need to be recorded as a key decision?

Expenditure which exceeds £400,000 or has a significant effect upon the communities of two or more wards will need to be recorded as a key decision (please contact Democratic Services if you have any queries regarding this). For example, if under the contract you have already spent £200,000 and the extension will involve further expenditure of £250,000, then this will exceed £400,000 meaning that this will need to be recorded as a key decision.

5. Have you considered UK GDPR compliance?

If you are changing the scope of the service as part of the contract extension/variation so that different service users may be included or different arrangements made with regards to the collection of personal data then you will need to consult our Data Protection Officer (Elise Battison).

Lastly, when entering into a contract or looking to vary contract terms, due consideration should be given to “best value” which is a legal duty to secure continuous improvement in the way in which the Council’s functions are exercised, having regard to a combination of economy, efficiency and effectiveness. In practical terms this means ensuring that the contract terms reflect best value for money whilst at the same times meeting the aims of the service, which can include non-financial considerations such as quality of service and value added services (criteria which ought to have been included at the time of advertising the contract).