



Contract Standing Orders

(approved by Council on the [9th September 2019] and effective from that date)

Document Control

Organisation	Copeland Borough Council
Title	Contract Standing Orders
Version	Draft 0.3
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Filename	
Owner	Sarah Pemberton
Subject	Contract standing orders
Protective Marking	
Review Date	9 th September 2021

Revision History

Version Reviewed	Date Reviewed	Reviewed By	Description of Revision

Document Approval

Version	Approved By	Date
3	Corporate Leadership Team	07.08.19
	Executive	
	Standards and Ethic Committee	
	Overview and Scrutiny Committee	
	Full Council	

Document Distribution

This policy is to be distributed to all staff and elected members of Copeland Borough Council and placed on the Council's Intranet Site.

Contributors

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Purpose

Procurement operates in a complex legal framework set by the European Union and the UK Government. All local authorities are required by section 135 of the Local Government Act 1972 to make standing orders for the supply of goods and materials or for the execution of works aimed at securing competition and for regulating the manner in which tenders are invited. The Public Contracts Regulations 2015 set out detailed procurement rules for supply, works and service contracts. These Regulations are UK law and will remain in force if the UK leaves the European Union. Regulations have been drafted (the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019) to deal with consequential amendments of leaving the Union.

This document updates and supersedes those processes set out in the Council's Contract Procedure Rules 2012. The document should be read alongside the Council's Procurement and Contract Management Strategy 2018-2021 which was approved by the Council's Executive on the 6th December 2018.

Introduction

By following Contract Standing Orders ("CSO's"), in dealing with the Council's procurement, officers can be sure that they have acted in an appropriate manner and are protected from any accusation of corruption, fraud, illegality or misuse of public funds.

These CSO's provide the framework for the procurement of all works, goods and services and for transactions relating to property and must be complied with by all members, officers, consultants and other external agents appointed to act on behalf of the Council in procurement matters.

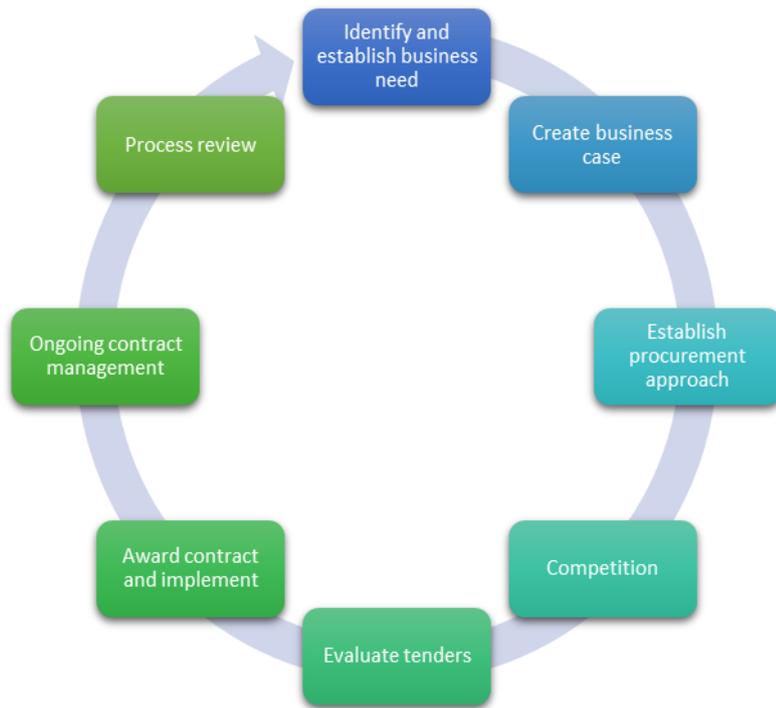
They are broadly sequenced to follow the Procurement process to help the user navigate more effectively to the relevant section.

The Council's Procurement Officer will provide advice to officers on CSO considerations as well as best practice procurement relative to the specific project being planned.

All monetary values referred to in these orders are total contract values, not annual values, and exclude VAT unless otherwise stated. They cover expenditure contracts and income generating contracts.

Scope

In line with the Procurement and Contract Management Strategy 2018-2021, this document describes and outlines processes to be used for the whole of the procurement lifecycle as illustrated in the diagram below.



CONTRACT PROCUREMENT

SO.1 Compliance

- 1.1. Every member and employee of the Council must comply with these CSO's. Any Officer can contact Internal Audit if he/she believes that the provisions of these CSOs are not being followed.
- 1.2. Any other person who is engaged in the letting, management or supervision of a contract on behalf of the Council must comply with these CSO's as if s/he were an employee of the Council. This applies to a contractor who wishes to employ a sub-contractor whether nominated or not.
- 1.3. These CSO's apply to all procurement decisions, regardless of the source of funding, or the status of the contractor (i.e. they apply equally to selection of both main contractors and nominated sub-contractors or suppliers). Where external funding is being used cognisance of any grant funding conditions must also be had which impose additional procurement requirements.
- 1.4. Every contract must be let in compliance with these CSO's and also the Public Contracts Regulations 2015 with applicable European and domestic legal requirements.
- 1.5. Where the Council has an established in-house team with suitable capacity, whether it be direct works (engineering, building, grounds maintenance, etc.) or professional services (accountancy, legal, surveying, etc.) all relevant works and services shall be delivered by that team except where specialist advice is required.

- 1.6** All members and officers involved in the procurement, award and management of Council contracts shall act with the highest standards. At all times during the procurement process all members and officers shall consider and implement the principles of non – discrimination, equal treatment and transparency.
- 1.7** Particular attention is drawn to SO.19 which relates to conflicts of interests. If an officer involved in a procurement is related to or knows a potential supplier then this should be declared to the Monitoring Officer at the outset so that appropriate measures can be put in place to avoid conflict and maintain impartiality. Regulation 24 of the Public Contracts Regulations is quite clear when it states that ‘contracting authorities shall take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators’ and that ‘the concepts of conflict of interest shall at least cover any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of procurement procedure’. Whilst this Regulation only applies to contracts about the EU thresholds the Council takes the view that it should apply equally to all contracts regardless of value.
- 1.8** These CSO’s are supplemented by a quick summary (Appendix D) outlining processes to follow for each of the Councils Procurement Thresholds.
- 1.9** No works, services or supplies procured shall commence until these Orders have been complied with, insofar as they are not waived, particularly the requirement to have a written contract or order signed and in place prior to work starting. The Monitoring Officer may grant an exception to this where extenuating circumstances apply.

SO.2 Exemptions

- 2.1** The Council considers the following exemptions to be special circumstances allowing a contract to be exempt from the requirements of these Orders relating to inviting quotes or tenders:
- (a) contracts placed through a framework agreement established by a central or regional purchasing body to which the Council is a named party;
 - (b) contracts falling within the ‘exclusions’ contained within regulations 7 to 17 of the Public Contracts Regulations 2015 where the specific requirements of those regulations are satisfied. These are, using the relevant regulation number:
 - 7. Contracts in the water, energy, transport and postal service sectors;
 - 8. Specific exclusions relating to electronic communications;
 - 9. Public contracts awarded, and design contests organised, pursuant to international rules;
 - 10. Specific service contract exclusions – broadcasting, arbitration services, specific legal and financial services, loans, civil defence and protection

- services, public passenger transport services and political campaign services;
11. Service contracts awarded on the basis of an exclusive right;
 12. Public contracts between entities within the public sector;
 13. Subsidised contracts;
 14. Research and development services;
 15. Defence and security;
 16. Mixed procurement involving defence or security; and
 17. Public contracts and design contests involving defence or security applying international rules.
- (c) contracts of employment (excluding temporary use of agency staff);
- (d) contracts awarding grants to external organisations provided that no works or services are provided direct to the Council in return for the grant;
- (e) in respect of land transactions only CSO23 shall apply;
- (f) where, following compliance with these CSO's no tenders, no suitable tenders, no requests to participate or no suitable requests to participate have been submitted in a response to an invite provided that the initial conditions of the contract are not substantially altered;
- (g) where the works, supplies or services can only be supplied by a particular economic operator for any of the following reasons:
- (i) the aim of the procurement is the creation or acquisition of a unique work or art or artistic performance;
 - (ii) competition is absent for technical reasons and no reasonably alternative or substitute exists and the absence of competition is not the result or artificially narrowing down of the parameters of procurement;
 - (iii) the protection of exclusive rights, including intellectual property rights; and no reasonably alternative or substitute exists; and the absence of competition is not the result or artificially narrowing down of the parameters of procurement;
- (h) where works, supplies or services are required by reasons of extreme urgency brought about by events unforeseeable by the Council (and not in any event attributable to the Council) and the time limits for inviting tenders or obtaining quotes cannot be met. In this case the procurement must be limited to those works, supplies or services necessary to overcome the extreme urgency. If the Council's Corporate Leadership Team declares an emergency this exemption shall automatically apply;

- (i) if the contract is one of supply where either (a) the products involved are manufactured purely for research, experimentation, study or development purposes but not to include quantity production to establish commercial viability or to recover research and development costs; (b) for supplies quoted and purchased on a commodity market; (c) for the purchase of supplies or services on particularly advantageous terms from a supplier winding up business activities or a liquidator, etc. (d) for additional deliveries by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the Council to acquire supplies having different characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance provided that in respect of (d) to the total length of the contract does not exceed 3 years unless exceptional circumstances exist;
- (j) design contracts awarded under design procurement rules;
- (k) where new works or services are a repetition of similar works or services provided that they are in conformity with a the original contract which was awarded following a tendering process, were envisaged by the original contract and is used within 3 years of the date of the original contract; e.g. a three year contract with an option to extend for a further two years.

If a Service Manager wishes to use any of the above exemption s/he must obtain the consent of the Council's Director of Corporate Services and Commercial Strategy to the use of such exemption using Section 1 of the Procurement Request Form (Appendix 1).

- 2.2** If none of the above exemptions apply and the proposed contract is below the EU procurement thresholds the Council's Director of Corporate Services and Commercial Strategy may exempt the contract from the requirements of these CPR's, either wholly or partially, if, to do so, is justified by other special circumstances.

SO.3 Requirement for Budgetary Provision and Initial Approval

- 3.1** No exemption under SO2 above shall be granted, no quotation or tender shall be invited nor shall any order be placed unless there is sufficient approved budgetary provision in place. It is the Service Manager's responsibility to ensure that such budget is in place prior to proceeding.
- 3.2** The existence of sufficient budget must be established at the outset and the Service Manager should complete section 2 of the Procurement Request Form (Appendix 1) and have this countersigned by the Section 151 Officer.
- 3.3** In completing section 2 of the Procurement Request Form (Appendix 1) the Service Manager should also confirm that approval to the project and/or expenditure exists. This may be an express minute of the Executive or Council or it may be the exercise of

delegated authority. Either way the provision relied on should be clearly identified. The Solicitor can advise on this as appropriate.

- 3.4** Particular care must be taken with contracts committing the Council to long term expenditure. The Council's medium term financial strategy identifies and approves expenditure currently up to three years in advance. The Service Manager should ensure, in obtaining the Section 151 officer's counter-signature that the Section 151 Officer is fully aware of ongoing expenditure outside budget already approved by Council.

SO.4 Determining the Contract Value and Duration

- 4.1** At the outset it is necessary to calculate the estimated value of a procurement. This will be the total amount payable, net of VAT, including the value of any form of option or renewal as set out in the procurement documents.

- 4.2** The principles of valuation are as follows:

- (a) The estimated value shall be calculated at the moment the call for competition is sent;
- (b) A procurement shall not be structured with the intention of it excluding it from all or any of these CSO's;
- (c) A procurement shall not be subdivided with the effect of preventing it from falling within these CSO's unless justified by objective reasons;
- (d) All monetary values referred to in these CSO's are total contract values, not annual values, and exclude VAT unless otherwise stated. The contract value should be the summation of the whole life costs of the contract on offer e.g. the complete life cycle from start to finish.
- (e) Contract Value = Initial non – recurring elements (e.g. materials, supplies, training, set up costs) + Recurring costs over the contract duration (e.g. materials, parts, annual licences, upgrading, disposal)
- (f) Calculating Contract Value:
 - (i) If the contract is a one off purchase then the total value will be quite easy to estimate based on "should cost" or benchmarked comparisons.
 - (ii) If the contract is spread over a number of years (i.e. 3 years + 2 years optional extension) the contract value is the total life cost value over the maximum contract duration.
 - (iii) If it is intended to buy similar goods or services year on year but the length of contract is unknown or not defined, an estimate based on the value of purchasing over 4 years will be used as the contract value.

- (g) Contracts over 5 years duration should be approved by Legal Services in conjunction with Procurement. Single supplier / multi supplier Framework Agreements cannot exceed 4 years duration. Provision should be made for long term agreements whereby an extension period beyond the initial term may be beneficial to the Council in the future.

4.3 Contracts must be packaged appropriately to achieve maximum value for the Council.

4.4 In respect of contracts through a staffing agency the Service Manager should consult with the Procurement Officer prior to making such appointment. The Council is looking toward developing an approved list of agency suppliers whose agency fees have been compared and tendered.

SO.5 Contracts valued up to £499

5.1 Requirements: A manager should ensure that they are receiving value for money in respect of contracts up to £499.

5.2 Authority: Service Manager can authorise.

5.3 Forms: No requirements.

5.4 Contract: Use standard purchase order via the Total system.

5.5 Retention: Retain purchase order form electronically for 12 months provided receipt of payment issued; otherwise 6 years.

SO.6 Contracts valued £500 to £9,999

6.1 Requirements: Where the value of a contract is likely to be £500 to below £10,000 a Service Manager should adopt the procedure that is most appropriate to provide best value to the Council. This can be done by obtaining prices or quotes from three suppliers or undertaking an internet comparison of prices charged by competitive providers, information from other local authorities who have may have procured similar items or from recent benchmarking data prepared by reliable sources.

6.2 Authority: Service Manager can approve.

6.3 Forms: Manager to complete sections 2 and 3 of the Procurement Request Form.

6.4 Contract: Use standard purchase order via the Total system.

6.5 Retention: The Procurement Request Form and the order should be retained electronically for 6 years.

SO.7 Contracts with a value £10,000 to £24,999

7.1 Requirements: A Service Manager should obtain a minimum of three quotations allowing at least one week for suppliers to make a quote.

7.2 Authority: Service Manager can approve.

7.3 Forms: Manager to complete sections 2 and 3 of the Procurement Request Form.

7.4 Contract: Use standard purchase order via the Total system.

7.5 Retention: All documentation should be retained for six years.

SO.8 Contracts with a value £25,000 - £49,999

8.1 At £25,000 chapter 6 of the Public Contracts Regulations 2015 is engaged. This states that where an authority decides to advertise a procurement the information must also be published on the Cabinet Office's web based portal for advertising opportunities ('Contracts Finder'). If a procurement is advertised on 'the Chest' (the Council's procurement portal) this automatically places the opportunity on Contracts Finder also.

8.2 The Council, for the purposes of the Regulations, advertises an opportunity if it does anything to put the opportunity in the public domain or brings the opportunity to the attention of suppliers generally or to any class or description of suppliers which is potentially open-ended. However, if the opportunity is only available to a number of suppliers who have been selected for that purposes (whether ad hoc or by virtue of closed category membership) then this will not be deemed to be advertising an opportunity.

8.3 Requirements: Where the estimated value of a works, goods or services contract is £25,000 to £49,999 suitable suppliers for a restricted quotation should be nominated by the Service Manager and confirmed with the Procurement Officer. That Officer will then invite quotations via The Chest portal. However, the option to convert from restricted to open advertising will be used if a wider supplier search would benefit the Council or the Service Manager is unable to nominate suppliers.

8.4 Forms: Prior to the invitation being made on the Chest the a decision should be made by the Procurement Officer on the documents necessary to invite quotes. This is likely to include the matters referred to in SO12. The Procurement Officer may seek advice

from the Solicitor on the form of documentation, particularly the contract conditions.

The Service Manager should complete sections 2 and 4 of the Procurement Request Form.

- 8.5 Authority:** The Service Manager should make a recommendation to the Director of Corporate Services and Commercial Strategy who will consider and, if appropriate, make the appointment.
- 8.6 Contract:** This will depend on the nature of the works or services being procured. The use of a purchase order may still suffice although it is likely that the Council's position may be better protected by using the Council' standard form of contract or a national form of contract e.g. JCT minor works contract. This decision will be made by the Procurement Officer following consultation with the Solicitor.
- 8.7 Retention:** The signed contract and Procurement Request Form should be retained for 6 years.

SO.9 Contracts with a value £50,000 to below EU Threshold for Services (as at 1st January 2018 - £181,302)

- 9.1 Requirements:** Where the estimated value of a works, goods or services contract is £50,000 to below the EU threshold for services (as at 1st January 2018 - £181,302) tenders should be invited via the Chest portal.

- 9.2 Forms:** Prior to the invitation being made on the Chest the a decision should be made by the Procurement Officer on the documents necessary to invite tenders. This is likely to include the matters set out in SO12. The Procurement Officer may seek advice from the Solicitor on the form of documentation, particularly the contract conditions.

The Service Manager should complete sections 2 and 5 of the Procurement Request Form

- 9.3 Authority:** The Service Manager should make a recommendation to the Director of Corporate Services and Commercial Strategy who will consider the recommendation and, if appropriate, then make the appointment.
- 9.4 Contract:** This will depend on the nature of the works or services being

procured. The use of a purchase order may still suffice although it is likely that the Council's position may be better protected by using the Council's standard form of contract at Form 3 or a national form of contract e.g. JCT minor works contract. This decision will be made by the Procurement Officer following consultation with Legal Services.

- 9.5 Retention:** The signed contract and Procurement Request Form should be retained for 6 years.

SO.10 Contracts with a value in excess of the EU Service Threshold (as at 1st January 2018 - £181,302)

- 10.1** Where the estimated contract value for a works, goods or services contract exceeds the relevant EU public procurement threshold for services (as at 1st January 2018 - £181,302) any contract must be issued by the Procurement team via The Chest in compliance with the relevant legal requirements, in particular the Public Contracts Regulations 2015 and these CSO's.
- 10.2** If the contract value exceeds the threshold for advertising in Europe the Procurement Officer will arrange for the issue of a Contract Notice (advert) in the OJEU (Official Journal of the European Union) and to be followed by an invitation to tender using one of the mandated procedures set out in the Public Contract Regulations 2015 (namely; open; restricted; competitive dialogue; competitive procedure with negotiation; or innovation partnership). Procurement will advise on the most appropriate procedure to be followed.
- 10.3** Where there is a conflict between legislation and these CSO's, the legislation will prevail.
- 10.4** Where the contract is for services or services and supplies then consideration should be given to the Public Services (Social Value) Act 2012. This Act applies to all service contracts and frameworks to which part 2 of the Public Contracts Regulations 2015 apply. It is our duty to consider "(a) how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area, and (b) how, in conducting the process of procurement, it might act with a view to securing that improvement". This needs to be considered for each contract and taken into account.
- 10.5 Requirements:** If the type of contract exceeds the EU thresholds the procurement will be advertised in OJEU, the Portal and Contracts Finder. Contracts in this category are likely to be for supplies and services. Contracts for works will only be advertised in OJEU should the estimated value exceed £4,551,413 and therefore the procurement will be advertised on the Portal and in Contracts Finder.

10.6 Forms: Prior to the invitation being made on the Chest the a decision should be made by the Procurement Officer on the documents necessary to invite tenders. This is likely to include the matters set out in SO12. The Procurement Officer may seek advice from the Solicitor on the form of documentation, particularly the contract conditions. The documentation should be prepared in advance of the first advertisement being made.

The Service Manager should complete sections 2 and 6 of the Procurement Request Form.

10.7 Authority: The Service Manager should make a recommendation to the the Director of Corporate Services and Commercial Strategy who will consider the recommendation and then make an appropriate recommendation to the Elected Mayor. The Elected Mayor may make the decision him/herself or refer the matter to the Executive. If s/he decides to make the decision s/he shall first make a 'minded to' decision which shall be subject to call in under the Council's Overview and Scrutiny scheme. If his 'minded to' decision is not called in then s/he will proceed to make a decision at the expiry of the 7 day call in period. If his decision is called in then any decision will be delayed. If the Elected Mayor refers the matter to the Executive then normal call-in arrangements will apply.

10.8 Contract: This will depend on the nature of the works or services being procured. A purchase order should not be used. The value dictates that a formal contract should be in place either using the Council' standard form of contract or a national form of contract e.g. JCT, ACE, etc. This decision on form of contract will be made by the Solicitor.

10.9 Retention: The signed contract and Procurement Request Form should be retained for 6 years or 15 years if the contract is under seal.

SO.11 Framework Agreements and Preferred Suppliers List.

11.1 Framework Agreements can be used in preference to an open/restricted selection process for contracts above £10,000.

11.2 The term of the Framework Agreement must not exceed 4 years and, while an Agreement may be entered into with one provider, where an agreement is concluded with several organisations, there must be at least 3 in number.

11.3 Contracts based on Framework Agreements shall be awarded by either:

- (a) Applying the terms laid down in the Framework Agreement (where such terms

are sufficiently precise to cover the particular call off, including hourly rates, activity costs, product prices, etc.) without re-opening competition; or

- (b) where the terms laid down in the Framework Agreement are not precise enough or complete for the particular call off, by holding a mini competition based on a written specification of the Council's requirements in accordance with the following procedure:
 - (i) Inviting organisations within the Framework Agreement which are capable of executing the subject of the contract to submit written quotes or formal tenders;
 - (ii) Fixing a time limit which is sufficiently long to allow written quotes or tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract;
 - (iii) Awarding each contract to the Tenderer who has submitted the best written quote of formal tender on the basis of the award criteria set out in the specifications of the Framework Agreement.

11.4 A number of bodies have framework agreements in place (e.g. the Government Procurement Service (Cabinet Office), ESPO and Crown Commercial) have in place various Framework Agreements that have already been established in accordance with EU Procedures. These may be used by the Council in place of advertising projects and without the need for re tendering . You can seek advice and guidance from the Procurement Officer, Solicitor or Section 151 Officer. Details can also be found on the OGC website: <https://www.crowncommercial.gov.uk/>

SO.12 Content of Invitations to Quote or Tender

All Invitations to Quote or Tender should be submitted on the Portal's templates. Procurement will oversee the contents of all invitation to tender or requests for quotation to ensure they include:

- (a) A detailed description of the works, goods or services being procured;
- (b) A detailed specification indicating the outcome required;
- (c) An outline of the Procurement timetable;
- (d) Confirmation of contract duration including possible extensions;
- (e) Confirmation of contract value;
- (f) Specific terms and conditions of contract and confirmation of contract to be used, if not standard terms;
- (g) The evaluation criteria including any weightings;
- (h) The cost (pricing) mechanism and instructions for completing the tender sum response;
- (i) The quality and service requirements and associated response form;

- (j) Where there is a potential transfer of employees, the Council's view on whether TUPE will apply;
- (k) If external funding is being used to fund the project and conditions required by the external funder in the grant funding agreement; and
- (k) The form and content of any method statements to be provided.

SO.13 Collaborative Procurement

13.1 Where procurement is undertaken in collaboration with one or more other public authorities the contract standing orders of one of the other authorities may be used in place of these Orders.

13.2 An invitation to tender or to submit quotations may be made for supply to other authorities (including town and parish councils in Copeland) in addition to the Council on similar terms.

SO.14 Form and contents of contracts

14.1 The choice of contract terms applicable for a procurement project should be decided at the start of the process by seeking advice from Procurement Officer and/or the Solicitor. A range of standard contract type templates can be provided by Legal Services to suit need. Contracts for works are usually based on national trade contracts.

14.2 The decision whether the contract should be sealed or just signed should be discussed and agreed with Legal / Procurement. The decision will depend upon the use of statutory limitation period. A contract signed under hand provides 6 years limitation from the end of the contract term. A contract executed as a deed and sealed provides 12 years limitation from end of contract term. Contracts exceeding the relevant EU procurement thresholds must be entered into as a deed and sealed by Legal Services, thus giving the Council greater protection. Generally, other contracts should be signed under hand. Signing must be undertaken in accordance with CSO17.

14.3 Contracts will be appropriate to the nature of the services, goods or works being acquired. For low value contracts purchase order terms should suffice. For works a national form of contract is likely to be more appropriate. For services generally the Council's standard form of contract will be used. As a minimum a contract must address the following matters:

- The parties, ensuring that the supplier has legal status;
- A full and accurate description of what is to be supplied;
- The standard of workmanship and carrying out the work;
- Performance indicators;
- Price and payment details;
- Insurance requirements and indemnities;
- Assignment provisions;
- Default provisions;

Termination for insolvency, etc.;

Health and safety issues specific to the type of contract;

Equality requirements;

Freedom of Information Act issues;

Data protection/GDPR issues;

Adjudication requirements;

Modern Slavery Act provisions

Bribery and anti-money laundering (CSO 19);

Any issues arising the Public Services (Social Value) Act 2012; and

Whistleblowing.

14.4 The following clauses should also be considered for inclusion in a contract:

Voluntary living wage requirements - it is Council policy that every employee is remunerated with a Voluntary Living Wage. The Council's vision is much wider and will encourage its Suppliers to pay the Voluntary Living Wage if engaged via the Council's procurement process.

Cost savings and value improvements, if a long term contract;

Apprenticeship & local employment - the Council will encourage the employment of apprentices, local labour, employment and training opportunities through the procurement process and contract management insofar as they may be permitted by law;

Performance bonds and guarantees (see below, CSO18)

14.5 Contract roll-over clauses must be avoided. If the Council is inviting quotes or tenders with an option to extend that is acceptable as the extension will be at the Council's sole discretion. Problems arise where the Council is drawn into using a supplier's terms and conditions and these include automatic roll over clauses (e.g. even though an end date is specified the contract is deemed to continue after that date unless and until terminated by the Council serving a notice). Such clauses should be deleted.

SO.15 Submission and Opening of Tenders and Quotations

15.1 All invitations to tender or submit a quotation must specify requirements for their submission. Such requirements shall include a time by which tenders or quotations must be received by the Council.

15.2 All quotations with an estimated value below £25,000 must be opened, recorded and retained by the nominated officer of the relevant Service Team (who is independent of the quotation process). Quotation instructions shall clearly state that the quotations must be returned via email only to a dedicated e mail address quotations@copeland.gov.uk.

15.3 Returned quotations must be held securely and unopened by the nominated officer until the specified return date. The Contract Administrator (the Service Manager

organising the procurement or a person nominated by him/her) must supply the details of the suppliers that have been invited to quotation to the nominated officer prior to the quotations being received.

- 15.4** All quotations and tenders with an estimated value in excess of £25,000 will be held on The Chest and must be opened by Procurement. Audit history of the opening process will be maintained by The Chest.
- 15.5** Any quotations / tenders received after the specified opening date whether by post or email should not be opened or included in the evaluation.
- 15.6** In the case of quotations / tenders received via the e-procurement system Procurement and Legal Services can agree to accept a late quotation / tender response received via the e-Procurement system in exceptional cases where the fault is caused by errors within the e-procurement system.
- 15.7** If a quotation or tender exercise fails to return more than one bid response, then the Contract Administrator and Procurement Officer should decide whether the bid represents value for money and delivers the specification in full. A decision to proceed to award based on single bid OR suspension of the procurement exercise should be agreed, documented and approved via the Procurement Request Form. If the procurement exercise is suspended a decision to (a) revise the project and re-tender OR (b) abandon the whole project should be set out in the Procurement Request Form.
- 15.8** Quotations and tenders must be received by e mail or The Chest portal only. Any request for submissions to be made by post will be assessed by Legal and Procurement who can approve this method by exception.
- 15.9** All Suppliers to the Council providing Quotations or Tenders shall adhere to the following rules:
- They shall not communicate the amount of the proposed tender to anyone except the Council.
 - They shall not receive details of a proposed tender from any other Contractor.
 - They shall not adjust the amount of the proposed tender as a result of an arrangement with any other person other than the Council
 - They shall not agree with any other person:
 - a. the amount of the proposed tender;
 - b. not to tender.

SO.16 Evaluating Quotations and Tenders

- 16.1** Tenders and quotations will be evaluated as per the agreed evaluation criteria set out in the quotation or tender documentation. Procurement provides an evaluation matrix (spreadsheet) for this purpose.

- 16.2** The Procurement Officer must ensure that evaluation of tenders takes place involving suitably experienced officers to form “the evaluation panel” of at least 3 people. Such panel must only comprise of officers who do not have a conflict of interest in the particular procurement process. The results of the evaluation must reflect the consensus of the panel and be approved by the appropriate Service Manager. Minutes of the evaluation panel meeting shall be kept for transparency and audit purposes.
- 16.3** It is permissible to use consultants to assist with tender evaluation, but the final decision must be made by a Council officer with delegated authority.
- 16.4** If during the evaluation of tenders (over the contract value of £25,000) the panel requires post-tender clarifications from any or all of the tenderers, this must be communicated via The Chest messaging function by the Procurement team).
- 16.5** The results of the evaluation must be retained for the period of the limitation period from the end of the contract. A copy of the approved evaluation matrix will be provided to Procurement to store electronically (along with the award decision letters and final contract documents).

SO.17 Award Notification and Entering into Contracts

- 17.1** Signing and entering into contracts must be undertaken by the Director of Corporate Services and Commercial Strategy or the Solicitor or their nominees. Nominees must have appropriate knowledge of contract and procurement provisions.
- 17.2** The notification of the outcome of a desk-top quotation for contracts below £25,000 will be administered by the relevant Service Manager. Service Manager, Director or Mayoral approval, as set out above, to award the contract is required. All tenderers (successful and unsuccessful) will be notified on the same date along with details of their evaluation scores. Template letters are available from Procurement.
- 17.3** The notification of the outcome of a quotation or tender for contracts issued and received via The Chest will be administered by Procurement. All tenderers (successful and unsuccessful) will be notified along with details of their evaluation scores using the official notification letter template.
- 17.4** Suppliers / Contractors are required to hold and maintain appropriate levels of insurance during the period of any contract awarded by the Council. Evidence of the insurance cover held must be confirmed prior to the award of contract. This must be reviewed and confirmed annually for multi-year contracts
- 17.5** An official purchase order will be issued (unless otherwise agreed with Procurement) to awarded supplier(s) to call-off goods or services, cross referencing the Councils contract number and awarded suppliers quotation number (if available). Works orders will be instructed as set out in the works contract documents, with payment certificates used

to authorise payments. The terms and conditions of contract will be as set out in the quotation / tender pack

SO.18 Performance Bonds & Parent Company Guarantees

18.1 As part of the evaluation of short-listed tender responses the Contract Administrator will request from Procurement an independent financial appraisal report. The financial appraisal provides the Council with an overall financial risk score (referred to as failure score) used to assess the applicant's financial standing. The failure score ratings (0 poor to 100 good) are matched to a pass/fail result as detailed below:

- Score of 0 to 10 will mean automatic "FAIL" and the suppliers will be excluded from the procurement process.
- Score of 11 to 50 will be a "PASS - SUBJECT TO" provision of a performance bond or parent company guarantee if/when deemed appropriate.
- Score of 51 and over is a "PASS" meaning the Council will not request a performance bond or parent company guarantee (although this can be overruled on a case by case basis and may be required in respect of large works contracts).

18.2 A performance bond (PB) or parent company guarantee (PCG) provides the Council with a financial guarantee, typically limited to 10% of the contract price to protect against losses and/or damages as result of the Contractor failing to perform its contractual obligations up to practical completion. A performance bond is a tripartite agreement between the Contractor, its surety (a bank / insurer) and the Council. Likewise, a parent company guarantee is a tripartite agreement between the Contractor, its Parent Company and the Council.

18.3 The decision to seek the assurance of a performance bond (PB) or parent company guarantee (PCG) will depend on the risk factors related to the specific contractor and proportionate to the contract value and cost to the Council of the assurance. Advice from Procurement, Accountancy and Legal should be sought by the Contract Administrator where a contractor's financial appraisal highlights concerns.

SO.19 Conflicts of Interest, Bribery and Corruption

19.1 All officers involved with the award of contracts must comply with the Council's Anti-Fraud, Bribery and Corruption Strategy.

19.2 No gifts or hospitality, other than simple refreshments, shall be accepted by officers or members from any tenderers to any contract being let by the Council, either before or after a contract has been awarded.

19.3 No contract can be wholly awarded or managed by an officer who has other interests in the arrangement.

- 19.4** If it comes to the knowledge of a member or officer of the Council that a contract in which s/he has a pecuniary interest has been or is proposed to be entered into by the Council, s/he shall immediately inform the Monitoring Officer.
- 19.5** An officer shall not participate in a procurement process if he is related to or knows a potential supplier without the approval of the Monitoring Officer (SO 1.6 refers).

CONTRACT MANAGEMENT

SO.20 Contract Variations

- 20.1** Under Public Contracts Regulations 2015, a modification to an existing pre-tendered contract may be possible, without the need to re-advertise or retender, under the following circumstances:
- 20.2** The Contract Administrator, following legal advice, has included a modification (or review) clause in the original contract providing the possible options for a modification (or variation) to the contract (if required) based on quantity, time or monetary value. Any such modification clause must be clear, precise and unequivocal and must not alter the overall nature of the contract. Legal approval is required to invoke any modification clause.
- 20.3** Where no modification clause was added at tender stage, a modification to the contract may be undertaken in the following circumstances:
- (a) the value is below EU thresholds and the additional costs incurred are below 15% (if Works) or 10% (if Goods/Services) of the original contract value; or
 - (b) Where additional works services or supplies have become necessary, were not included in the initial procurements and where to change suppliers cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement and would cause significant inconvenience or substantial duplication of costs for the Council and the increase is not greater than 50% of the value of the original contract; or
 - (c) where the need for modification has been brought about by circumstances which the Council, acting diligently, could not have foreseen, the modification does not alter the overall nature of the contract and any increase in price does not exceed 50% of the value of the original contract;

In respect of (b) and (c) if the original procurement was above EU thresholds a notice of the extension must be provided to the EU publications office

- 20.4** Certain other factors may also permit contract modifications, such as for minor changes or as a result of corporate restructuring. Please seek advice from Legal Services.

20.5 Gaining approval for modification of a contract:

- Any modification to an existing pre-tendered contract must be documented by amendment of the original Procurement Request Form by completing section 7 of that form.
- The Contract Administrator will document the reason for the modification and under CSO clause 20.
- The Procurement Request Form amendment must be approved and signed by the Section 151 Officer to confirm the budget increase and by the person who approved the original procurement (Service Manager/Director of Corporate Services and Commercial Strategy/Mayor).
- The amended Procurement Request Form should be scanned and sent to Procurement to store alongside the original documents in the Contract Register.
- The contract variation between the Council and the supplier / contractor can then be arranged by the Contract Administrator.

SO.21 Contract Performance Monitoring

21.1 The Contract Administrator should establish regular reviews with the awarded supplier(s) to monitor the performance of the contract and ensure the cost, service and quality elements of the supplier offer meet (or improve upon) the tendered specification. The contract monitoring regime should be commensurate and proportionate to the contract and should include the use of simple and effective performance measurement. The proposed arrangement to mobilise and monitor the contract throughout its lifetime should be set out in the contract award proposal & approval.

21.2 Service Managers are accountable for ensuring the performance monitoring regime for awarded contracts is maintained in line with the contract documents and the Procurement Request Form.

21.3 Service Managers must ensure a performance checklist is completed for contracts over a 12-month contract duration. The checklists must be kept by the Service team for audit and continuous improvement purposes. Service Managers will be required to report on performance.

SO.22 Maintenance of the Contract Register

22.1 Under Government Transparency Law the Council must publish and maintain details of ALL “live” contracts. In order to achieve this requirement, Procurement will add details

of all contracts on the contract register accessible via a link on the Councils website for enquiries.

- 22.2** Copies of all Procurement paperwork and documentation for contract procurement over £5,000 will be forwarded to the Procurement Officer.
- 22.3** The unpublished electronic contract register allows for “private” documents to be stored. Procurement will add an electronic copy of the final signed / sealed contract and any relevant documents. This will be accessible to Council officers linked to the procurement.
- 22.4** A contract number (pre-fixed with C) must be requested from and be issued by the Procurement Officer.
- 22.5** All original sealed deed contract documents must be held centrally by Legal Services for the term of the contract (including any agreed extension periods), plus the statutory limitation period (12 years for sealed deeds). They must be referenced back to the Contracts Register. Hard copies be stored in a secure strong room.
- 22.6** All original signed under hand contracts must be held by the relevant Service unit for the term of the contract (including any agreed extension periods), plus the statutory limitation period (6 years for contracts under hand). They must be referenced back to a Service based register.
- 22.7** Service Managers are responsible for ensuring that:
- the original signed/sealed copies of the contract and any subsequent signed variations, have been stored as set out in this CSO22 and that summary details of any contract that has been entered into, that binds the Council to the terms and conditions of the contract plus a pdf copy of the signed / sealed contract is provided to Procurement to be entered on the Contracts Register administered by Procurement;
 - an electronic copy of the contract and any subsequent variations to the contract that are entered into during its lifetime are stored in their service filing areas (working copy);
 - Procurement will maintain the online Contracts Register to ensure the Council complies with the obligations of the Local Government Transparency Code (2015).

SO.23 Land transactions

- 23.1** Prior to the commencement of a land transaction the Council’s Property and Estates Manager shall carry out a written initial valuation of assets to be transacted (or exchange of land where the disposal is part of an exchange). This will include an assessment of the expected economic benefits of the disposal.

- 23.2** Prior to any disposal being taken forward ward councillors will then be consulted on the proposed transaction. This shall include all land transactions other than routine lease relating to allotment sites, garage sites, pigeon lofts, etc. In addition to ward councillors being consulted the Section 151 officer shall also be consulted.
- 23.3** If the disposal is of land comprising of an open space the proposal must be advertised so that the general public have an opportunity to comment.
- 23.4** The Solicitor has delegated authority to approve:
- the grant or surrender of a lease or licences where the annual rental or licence fee is less than £10,000 (or if a premium is charged the premium is less than £10,000) and the lease or licence is for a period of less than 15 years;
 - sales, purchases and easements where the value of the transaction is less than £10,000;
 - landlord's consents in respect of existing leases (e.g. assignments, alterations);
 - variations to existing leases, licences and charges if the variation, licence or charge is within the limits set out above in this 23.4 or the variation relates to terms other than rental or period;
 - consents arising from previously held housing stock; and
 - variation of covenants in previous land sales.
- 23.5** The exercise of the powers in 23.4 constitute an Executive function. As they relate to routine and operational transactions they shall not be the subject of call-in by the Overview and Scrutiny Committee.
- 23.6** The Director of Corporate Services and Commercial Strategy, in consultation with the Section 151 officer, has delegated authority to approve:
- leases and licences where the annual rental or annual licence fee is £10,000 or more but less than £50,000 per annum (or any premium is between these limits) or is for a period 15 years or more but less than 25 years;
 - sales, purchases and easements where the value of the transaction is £10,000 or more but less than £50,000;
 - variations to existing leases (including surrenders), licences and charges if the variation, licence or charge is within the limits set out above in 23.6 and new charges over property;
 - Other transactions where the Executive or Council has given delegated authority in respect of specific matters. When additional delegated authority has been given, this must be supported by signed documentation.

- 23.7** The exercise of the powers in 23.6 constitute an Executive function. As they relate to routine and operational transactions they shall not be the subject of call-in by the Overview and Scrutiny Committee.
- 23.8** The Director of Corporate Services and Commercial Strategy, in consultation with the Portfolio Holder or the Mayor has delegated authority to approve:
- leases and licences where the rental or fee is £50,000 or more but less than £100,000 per annum (or any premium is between those limits) or is for a period of 25 years or more;
 - sales, purchases and easements where the value of the transactions is £50,000 or more but less than £250,000:
 - all variations to existing leases, licences and charges not delegated by 23.4 and 23.6.
- 23.9** The exercise of the powers in 23.8 constitute an Executive function. They are subject to call in by the Overview and Scrutiny Committee as set out in chapter 8 of the constitution. This means that prior to making a decision the Director shall first make a 'minded to' decision which shall be subject to call in under the Council's Overview and Scrutiny scheme. If that 'minded to' decision is not called in then s/he will proceed to make a decision at the expiry of the 7 day call in period. If that decision is called in then any decision will be delayed pending consideration by the Committee.
- 23.10** The Executive must approve all other land transactions. Such decisions will be subject to call in by the Overview and Scrutiny Committee as set out in chapter 8 of the constitution. Where a decision alters the Council's approved annual budget then the decision will also be subject to approval by Council.
- 23.11** Disposals can be made by either open market competitive tender, in the form of a sealed bid, by auction or by direct negotiation with prospective buyers where no competition is likely to exist. At all times, the Council must achieve best value by maximising disposal proceeds wherever possible. The way a disposal is to be arranged shall be subject to agreement between the Solicitor and the Section 151 Officer or his/her representative.
- 23.12** Purchases will usually be made on the open market by direct negotiation, usually via a real property agent, or by tender. Occasionally they may need to be made via an auction. In these circumstances a bid would have to be made quickly. In these circumstances the decision to submit a bid will be made by the Director of Corporate Services and Commercial Strategy in consultation with the Elected Mayor and the Chair of Overview and Scrutiny Committee but with their agreement should the bid price exceed £250,000. If the purchase is outside approved budgets then the budget would first need to be altered by Council.
- 23.13** Disposals or leases at less than market value (community asset transfers), or acquisitions at more than market value, as defined by the Valuer, should be approved in accordance with the bands set out in 23.4, 23.6, 23.8 or 23.10 except that in respect

of 23.4 and 23.6 the decisions (not being routine operational decisions) shall be subject to call in by the Overview and Scrutiny Committee as set out in chapter 8 of the constitution. This means that prior to making a decision the Solicitor or Director shall first make a 'minded to' decision which shall be subject to call in under the Council's Overview and Scrutiny scheme. If that 'minded to' decision is not called in then s/he will proceed to make a decision at the expiry of the 7 day call in period. If that decision is called in then any decision will be delayed pending consideration by the Committee.

23.14 Where the Section 151 Officer and the Solicitor decide that land shall be disposed of by way of a formal open market competitive tender then:

- i) The procedure for the receipt, custody and opening of tenders and for dealing with late bids shall be in accordance with these CSO's, except that:
 - a) a defined range of uses which may be acceptable to the Council shall be provided in the tender documentation;
 - b) late tenders received shall be opened in the same way but the tender shall not be considered unless no other tenders have been submitted;

23.15 Land shall only be disposed of at auction with the consent of the Director of Corporate Services and Commercial Strategy who shall decide a reserve price.

23.16 Where the Section 151 Officer and the Solicitor decide that where the land shall be disposed of by direct negotiation with a prospective buyer then;

- the Council shall appoint a representative with appropriate valuation expertise to be present at all negotiations with the prospective buyer.
- a written record of all negotiations held with the prospective buyer shall be kept, which must include details of all the key facts and specific issues that were considered to arrive at the decision(s) determining the terms and conditions of the disposal.
- the approving officer/Executive/Council (as set out above) shall receive a post-disposal report, detailing the decisions taken as part of the disposal process, the results of the negotiations and the expected benefits of the disposal.
- where the disposal is over £250,000 in value the Council will be represented in negotiations with the prospective buyer by the Chief Executive or his/her nominee and the Council's Valuer or his/her representatives,
- the approving officer/Executive/Council (as set out above) may approve the disposal of the land on the terms agreed by the negotiation team either directly, or by appointing a panel of members to consider the terms of the disposal and recommend approval or rejection of the terms of the sale as appropriate.
- If a member panel is appointed, the approving officer/Executive/Council shall receive a post-disposal report detailing the decisions taken as part of the disposal process and the results of the negotiations.

23.17 Where there is a proposal to dispose of or acquire land to or from a Member or Officer of the Council other than by a competitive tender and the disposal or acquisition is in

the opinion of the Chief Executive not a routine disposal or acquisition, the proposal or acquisition shall be referred to the Executive for consideration and a full report shall be made by the Chief Executive on the proposal. (For these purposes persons shall be deemed to be related if they would be so deemed for the purposes of the officer employment rules of the Council.

23.18 The Property and Estates Manager shall always consider the effect of Value Added Tax on the acquisition and disposal of land. Guidance can be sought from the Section 151 Officer or his/her representative.

APPENDIX 1
PROCUREMENT REQUEST FORM

PROCUREMENT REQUEST FORM
(for contracts with a value exceeding £500)

Contract title:	
Contract reference (issued by Procurement Officer):	
Contract summary/scope/objectives:	
Service Manager:	
Project Manager (if different from Service Manager):	

SECTION 1: APPLICATION FOR EXEMPTION FROM CONTRACT STANDING ORDERS (*Delete if not applicable*)

I apply for this Project to be exempt from the requirements of Contract Standing Orders on the grounds that I believe Standing Order [insert number] applies to this Project.

State reasons for belief:

SECTION 3: APPROVAL OF CONTRACTS LESS THAN £25,000

I confirm that I have complied with CSO6 or 7.

The quotes received are as follows:

<u>Name of supplier</u>	<u>Date of quote</u>	<u>Quote price</u>

Having considered the quotes received I believe the following person to be providing best value for money:

As Service Manager I have therefore appointed _____ at a price of £_____ as suitable contractor to undertake this contract.

Signed: Date:

SECTION 4: APPROVAL OF CONTRACTS £25,000 UP TO £50,000

I confirm that I have complied with CSO8.

Quotes received were from nominated suppliers/an open invitation (*delete as appropriate*)

The quotes received are as follows:

<u>Name of supplier</u>	<u>Date of quote</u>	<u>Quote price</u>

Having considered the quotes received I believe the following person to be providing best value for money and recommend that person as supplier:

Service Manager's signature: Date:

I agree the Service Manager's recommendation

Signed: Date:

Director of Corporate Services and Commercial Strategy:

SECTION 5: APPROVAL OF CONTRACTS £50,000 UP TO EU SERVICE THRESHOLD

I confirm that I have complied with CS09.

Tenders received were from an open invitation.

The tenders received are as follows:

<u>Name of supplier</u>	<u>Date of tender</u>	<u>Tender price</u>

Having considered the tenders received I believe the following person to be providing best value for money and recommend that person as supplier:

Service Manager's signature: Date:

I agree the Service Manager's recommendation:

Signed: Date:

Director of Corporate Services and Commercial Strategy:

SECTION 6: APPROVAL OF CONTRACTS ABOVE EU SERVICE THRESHOLD

I confirm that I have complied with CSO10.

Tenders received were from an open/restricted invitation.

The tenders received are as follows:

<u>Name of supplier</u>	<u>Date of tender</u>	<u>Tender price</u>

Having considered the tenders received I believe the following person to be providing best value for money and recommend that person as supplier:

Service Manager’s signature: Date:

I confirm that I am satisfied that CSO’s have been complied with:

Signed: Date:
Procurement Officer

I approve the form of contract to be entered into:

Signed: Date:
Solicitor

I confirm that the budget position remains as set out in section 1 above:

Signed: Date:
Section 151 Officer

We agree the Service Manager’s recommendation:

Signed: Date:
Elected Mayor

Signed: Date:
Director of Corporate Services and Commercial Strategy:

SECTION 7: CONTRACT VARIATIONS/EXTENSIONS

I confirm that CSO20, in my opinion, applies in this case.

The proposed variation/extension is as follows:

Reason for proposed variation/extension:

The Council's Solicitor has confirmed that a variation/extension of the contract as set out above is lawful.

.....
Solicitor

.....
Date

The supplier is willing to vary the contract as set out above.

I confirm that the budget position remains as set out in section 1 above:

Signed:
Section 151 Officer

Date:

Having considered the above I recommend that the proposed variation/extension is approved.

Service Manager's signature: Date:

We agree the Service Manager's recommendation *(delete if not applicable)*:

Signed:

Date:

Mayor

Signed:

Date:

Director of Corporate Services and Commercial Strategy

