



# **Schools Standing Orders on Procurement and Contracts ("SSOPC")**

In effect from **1 November 2018**

**For any queries relating to these Standing Orders  
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<sup>1</sup> <http://schools.westsussex.gov.uk/Services/3668>

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## SECTION 1 – GENERAL

### 1. PURPOSE AND SCOPE OF SCHOOL'S STANDING ORDERS ON PROCUREMENT & CONTRACTS

- 1.1 Section 2.10 of the West Sussex Scheme for Financing Schools<sup>2</sup> requires schools maintained by West Sussex County Council ("**WSCC**") to abide by the WSCC's Financial Regulations, Financial Procedures and School's Standing Orders on Procurement and Contracts in relation to purchasing, tendering and contractual matters. All local authorities are required by law to have in place Standing Orders on Procurement, as part of their constitution. These separate "Schools Standing Orders on Procurement and Contracts" ("**SSOPC**") for schools are issued under section 2.10 of the West Sussex Scheme for Financing Schools. All maintained Schools must comply with these "Schools Standing Orders on Procurement and Contracts" for all purchases made or orders placed on or after 1 November 2018.
- 1.2 These Standing Orders apply to all spend with external suppliers or third parties regardless of the source of funding (for example, revenue, capital, grants, ring-fenced government money and/or any third party funding). These Standing Orders will also apply to any service concession and/or works concession contract.
- 1.3 The purpose of these Standing Orders is to set out and explain the School's minimum requirements when contracting for goods/supplies, services and works. They are designed to:
- (a) ensure we spend public money legally and fairly and avoid undue criticism or allegation of wrongdoing;
  - (b) secure Value for Money in the way we spend money, through appropriate competition between potential suppliers;
  - (c) generate market competition through transparent, fair and consistent ways of working;
  - (d) support supplier diversity, sustainability objectives, and equality of treatment; and
  - (e) to protect the School against risk of challenge that it has acted unfairly or illegally.
- 1.4 These Standing Orders do not apply to the following instances, which are managed by separate policies and guidelines:
- (a) contracts for the acquisition or lease of land and/or real estate;
  - (b) contracts for permanent or fixed term employment (but note rules on consultants contracts);
  - (c) works or orders placed with utility companies (for example, re-routing gas pipe work);
  - (d) services to be delivered by West Sussex County Council in-house service; and
  - (e) non-trade payments to third parties, such as insurance claims, pension payments, statutory payments to public bodies.
- 1.5 These Standing Orders do not cover contracts of employment, but they do apply to contracts for services purchased from employment agencies, contracts for recruitment advertising services and consultancy services.
- 1.6 These Standing Orders do apply to the leasing, renting and hiring of supplies/goods to which the Local Authorities (Capital Finance) Regulations 1997 apply. All maintained schools are expressly forbidden from entering into any form of finance lease without approval of the Secretary of State for Education<sup>3</sup>. Other forms and types of leasing (such as finance leases or hire purchase) may constitute borrowing and will require the specific approval of the Council's Section 151 Officer<sup>4</sup>, as they may contravene the County Council's borrowing policy. Further details are contained in the West Sussex Scheme for Financing Schools.

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<sup>2</sup> <http://schools.westsussex.gov.uk/Page/1306>

<sup>3</sup> Education Act 2002 and section 3 of the WSCC Scheme for Financing Schools

<sup>4</sup> WSCC Director of Finance, Performance and Procurement

- 1.7 Where the proposed contract falls within the Public Contracts Regulations 2015 (PCR 2015)<sup>5</sup> or the Concession Contracts Regulations 2016 (CCR 2016)<sup>6</sup>, those regulations apply in addition to these Standing Orders. In the event of a conflict, the Public Contracts Regulations 2015 (or the CCR 2016 if applicable) will apply and all maintained schools must comply with the relevant Regulations.
- 1.8 Where the estimated total value of the contract meets or is in excess of the relevant EU Threshold, the Public Contract Regulations 2015 must be adhered to (or in the case of a works or service concession contract, the CCR 2016). Advice must be sought from the WSCC’s Head of Procurement Services and/or the WSCC’s Commercial Legal Team<sup>7</sup>. See Standing Order 11 to determine how to calculate the value of a contract.
- 1.9 The EU thresholds (net of VAT) that apply from 1 January 2018, and remain fixed for two (2) years (31/12/2019), are<sup>8</sup>:

<b>Supplies</b>	<b>Services</b>	<b>“light touch” Services</b>	<b>Works</b>	<b>Concession Contracts</b>
£181,302	£181,302	£615,278	£4,551,413	£4,551,413
(€221,000)	(€221,000)	(€750,000)	(€5,548,000)	(€5,548,000)

- 1.10 Where the estimated total value of the contract is below the EU Threshold the School must consider whether there would be any cross border interest in the contract and if so shall comply with EU treaty principles of proportionality, mutual recognition, transparency, non-discrimination and equal treatment. There are limited regulations in the PCR 2015 that will also apply to below EU Threshold Contracts.
- 1.11 From time to time it will be necessary to update these Schools Standing Orders on Procurement and Contracts because of changes in EU Directives or other EU or UK legislation; where this is necessary the WSCC Head of Procurement and Contracts Services and/or the WSCC Director of Law, Assurance and Strategy will issue a bulletin to schools explaining the action necessary to comply with any such changes in the law. The instructions in such bulletin will be deemed to be part of the Schools Standing Orders on Procurement and Contracts. The changes will be formally incorporated into the SSOPCs as soon as possible thereafter. Schools will also be notified by bulletin of any other changes to the SSOPCs.

## **2. PRINCIPLES OF CONTRACTING**

- 2.1 The School and its staff must adhere to the following principles in carrying out all procurement activity:
- (a) procurement procedures shall be fair, transparent, and properly planned;
  - (b) all bidders and prospective bidders shall be treated equally;
  - (c) the objective of all procurement shall be to achieve Value for Money;
  - (d) keep appropriate records of all decisions taken and communications between the School and bidders or prospective bidders; and
  - (e) where the value of the contract meets or exceeds £100,000, the Head Teacher shall seek and comply with any advice from WSCC Legal Services (Commercial Legal Team) and WSCC Procurement and Contract Services<sup>9</sup>.
- 2.2 It is a disciplinary offence to fail to adhere to these Standing Orders.

<sup>5</sup> <http://www.legislation.gov.uk/ukxi/2015/102/contents/made>

<sup>6</sup> The Concession Contracts Regulations 2016 came into force on 18 April 2016

<sup>7</sup> <http://schools.westsussex.gov.uk/Page/2983>

<sup>8</sup> <http://www.ojec.com/thresholds.aspx>

<sup>9</sup> <http://schools.westsussex.gov.uk/Services/3602>

### **3. AUTHORITY TO CONTRACT**

- 3.1 The Governing Body of the School is responsible for ensuring these Standing Orders are properly understood and complied with by the School.
- 3.2 The Governing Body is responsible for ensuring that all officers to whom they delegate their functions under these Standing Orders have the necessary skills and training to exercise the delegated authority appropriately.
- 3.3 Head Teachers must not commence or permit the commencement of a procurement process (including any variation or extension to a contract) without specific delegated authority to undertake it either by means of delegated authority given under the scheme of delegation, or from the relevant Governing Body or from the relevant Cabinet Member, through a published decision or other authorised decision in accordance with the WSCC Constitution.<sup>10</sup>
- 3.4 In the event the Head Teacher requires the authority of the Governing Body, the Head Teacher must ensure, wherever possible, that the Governing Body is likely to be available to make a decision. In cases of urgency where the matter cannot wait until the Governing Body is available, the Head Teacher, in consultation with the Chair of Governors, may act, but must report their decision to the Governing Body as soon as possible.

### **4. RESPONSIBILITIES OF GOVERNING BODY & HEAD TEACHER OF THE SCHOOL**

#### **4.1 The Governing Body shall:**

- (a) be responsible for all procurement undertaken in their School;
- (b) ensure all procurement and delegated decision-making adheres to the Governing Body's Scheme of Delegation and these Standing Orders;
- (c) obtain Cabinet Member approval where required to do so by the Council's constitution before undertaking any procurement activity;
- (d) comply with the Financial Regulations<sup>11</sup>, especially with regard to the adoption of vendors and creation of a valid purchase order;
- (e) notify and engage with WSCC Procurement and Contract Services<sup>12</sup> and WSCC Legal Services (Commercial Legal Team) for all proposed contracts with an estimated value of **£100,000** or more;
- (f) nominate appropriately skilled and qualified Head Teachers and officers to undertake procurement activity;
- (g) ensure all sourcing decisions represent Value for Money and are within approved budgetary limits;
- (h) provide for appropriate and effective contract and supplier relationship management for all contracts under their responsibility; and
- (i) ensure sufficient funds are available for relevant procurement and contracting activity and allocate appropriate funds in their budget.

#### **4.2 Head Teachers shall:**

- (a) manage the procurement process in compliance with these Standing Orders, the PCR 2015, the Financial Regulations and the Council's internal systems and processes for commissioning and procurement;
- (b) ensure they have adequate information to support and justify all commissioning and procurement activity;

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<sup>10</sup> <https://www.westsussex.gov.uk/about-the-council/how-the-council-works/constitution/>

<sup>11</sup> <http://schools.westsussex.gov.uk/Page/1306>

<sup>12</sup> <http://schools.westsussex.gov.uk/Services/3602>

- (c) seek appropriate advice and support from their Governing Body, Procurement and Contract Services, Financial Services and Legal Services;
- (d) conduct all tendering activity in a fair, transparent and non-discriminatory manner;
- (e) devise a procurement plan that is efficient and suitable for the purchase and the market concerned, taking into account any other relevant sourcing options, such as the use of existing contracts and frameworks; and
- (f) maintain a full record and audit trail of all procurement activity (the 'Procurement File'), including decisions made and communication with suppliers.

## **SECTION 2 – PRE PROCUREMENT ACTIVITY**

### **5. OPTIONS APPRAISAL & SOCIAL VALUE CONSIDERATIONS**

- 5.1 The Head Teacher shall ensure that an appropriate sourcing approach is adopted in each case taking into account the budget allocation, the needs of the School and its staff and pupils, the nature of the market and other commercial considerations.
- 5.2 In considering a sourcing approach for services contracts, the Head Teacher shall consider and record on the Procurement File how the sourcing approach might improve the economic, social and environmental well-being of West Sussex in accordance with the Council's [Social Value Policy](#).<sup>13</sup> Where such social value is identified, the Head Teacher shall take steps to secure these benefits in any procurement exercise and contract.
- 5.3 The Head Teacher shall ensure a report on the sourcing decision is included in the Procurement File and clearly referenced in any decision to approve commencement of the procurement.

### **6. MARKET TESTING AND ENGAGEMENT**

- 6.1 The Head Teacher shall determine the sourcing approach based on:
  - (a) any available views from service users and other stakeholders;
  - (b) consultation or testing with the relevant market;
  - (c) current performance and future objectives for the product or service;
  - (d) budgetary limits; and
  - (e) the existence of other public contracts, West Sussex County Council contracts and Framework Agreements which might be suitable for the School to use.
- 6.2 Head Teachers may engage in market consultations with suppliers/providers/contractors before a procurement exercise commences with a view to preparing the procurement, but where this takes place there is an obligation on the School to ensure that competition is not distorted by the subsequent participation in the formal tender exercise of those suppliers/providers/contractors that were involved in the market engagement.<sup>14</sup>
- 6.3 The Head Teacher shall ensure that any pre-procurement market engagement does not give any one provider an advantage in bidding for the contract over another or engage in a way that disadvantages one particular potential provider or a group of potential providers. The School must not, as a result of the pre-procurement market engagement, shape the subsequent procurement and School requirements in favour of any one particular potential provider.
- 6.4 Where a potential provider has advised the School, or has otherwise been involved in the preparation for a specific procurement and is going to, or is likely to, participate as a Tenderer in that procurement process the School must:
  - (a) provide all Candidates/Tenderers with all relevant information exchanged or arising out of the potential providers prior involvement; and

<sup>13</sup> [https://www.westsussex.gov.uk/media/5887/embedding\\_social\\_value\\_policy.pdf](https://www.westsussex.gov.uk/media/5887/embedding_social_value_policy.pdf)

<sup>14</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/62097/PPN-Procurement-Supporting-Growth.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62097/PPN-Procurement-Supporting-Growth.pdf)

(b) fix adequate time limits for the return of tenders.<sup>15</sup>

6.5 The Council's Procurement and Contracts Services function shall provide professional support in carrying out all market engagement exercises for contracts valued at £100,000 or more and the Head Teacher shall comply at all times with such guidance.

## **7. LOTS**

7.1 For every procurement relating to a contract which exceeds the relevant EU Threshold, the Head Teacher must:

7.1.1 consider whether the contract should be sub-divided into and procured in lots;

7.1.2 provide reasons for any decision not to subdivide into lots, which shall be included in the Procurement Report<sup>16</sup>; and

7.1.3 comply with the PCR 2015 in the manner in which it requires tenderers to bid for lots.

## **8. USE OF FRAMEWORK AGREEMENTS**

8.1 A framework agreement can be created for the benefit of one or more Contracting Authorities. In the case of a multi-purchaser framework, this can be by:

(a) a Contracting Authority acting as a central purchasing body for several Contracting Authorities; or

(b) all of the relevant Contracting Authorities entering into an agreement with one or more suppliers.

8.2 Head Teachers should, before carrying out a procurement exercise, consider if there is a Framework Agreement available for use by the School. When considering using a Framework Agreement set up by another Contracting Authority the Head Teacher will need to ensure that:

(a) the School is legally able to use the Framework Agreement;

(b) the scope of goods, services or works, and the specifications for these are suitable for the School's requirements;

(c) the scope and value of the School's requirements fall within that which was set out in the original contract notice (advertisement) for the Framework Agreement;

(d) the terms of the Framework Agreement and call-off contract are suitable and accord with the School's requirements without the School having to make any significant changes; and

(e) the suppliers appointed to the Framework Agreement represent the most suitable suppliers in the relevant field for the School's requirements.

8.3 The School, in accessing the Framework Agreement, is responsible for compliance with the PCR 2015 in using the Framework Agreement and in respect of any call-off procedure it conducts itself.

8.4 When considering use of a framework agreement in accordance with Standing Order 8.2 the Head Teacher shall consult with WSCC Procurement and Contracts Services. If a Head Teacher wishes to access a Framework Agreement they should contact WSCC Procurement and Contract Services and, if required the Commercial Legal Team, as appropriate.

## **9. USE OF COUNCIL CONTRACTS**

9.1 Prior to carrying out any procurement exercise the Head Teacher shall first consider whether there are any existing West Sussex County Council contracts, framework agreements or dynamic purchasing systems that are available to Schools.<sup>17</sup>

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<sup>15</sup> Regulation 41 of the Public Contracts Regulations 2015

<sup>16</sup> Regulation 46(2) of the Public Contracts Regulations 2015

<sup>17</sup> Schools may obtain the list of WSCC contracts available to schools by contacting WSCC Procurement and Contracts Services - [procurement@westsussex.gov.uk](mailto:procurement@westsussex.gov.uk).

## **10. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 ("TUPE") CONSIDERATIONS**

- 10.1 Prior to commencing any procurement exercise or otherwise awarding and entering into a new contract for services the School shall consider whether TUPE may apply to any current School employees and/or any current Service Provider employees that carry out the same or similar services as those to be set out in the new contract.
- 10.2 Any request for quote or invitation to tender to be issued must make all bidders aware if TUPE may apply and should contain sufficient anonymised information for bidders to consider in preparing their quote/tender for the contract.
- 10.3 Where TUPE may apply to any School employees the School shall seek appropriate legal advice and consult with WSCC Pensions<sup>18</sup> and shall follow any advice provided.
- 10.4 In the event that any School employees are likely to TUPE transfer to a new employer the Governing Body shall be responsible for ensuring compliance with TUPE and ensuring that the contract contains appropriate TUPE and pension provisions. Schools can contact the Legal Services Commercial Team for standard Council TUPE and pension contract provisions and template admission agreements.

## **11. CALCULATING CONTRACT VALUE**

- 11.1 The value or estimated value of all contracts to be procured must be properly assessed to determine whether or not they meet particular thresholds set out in these SSOPCs and under the PCR 2015.
- 11.2 All contracts which may have a value which meets or exceeds the relevant EU Threshold shall be assessed in accordance with PCR 2015<sup>19</sup>.
- 11.3 The value of all other contracts shall be calculated to be the value:
- (a) net of VAT;
  - (b) including the maximum possible extensions and renewals;
  - (c) in the case of a framework agreement, the maximum estimated value of all the contracts to be awarded during the term; and
  - (d) inclusive of any potential spend through the contract concerned by other schools and/or contracting authorities.
- 11.4 The procurement process required for goods, works and services depends on the total value of the goods, works and services to be supplied under the contract or order throughout its entire term, not just the annual value.
- 11.5 Schools must not artificially divide up orders or contracts to keep them below the EU Threshold or lower than any particular threshold set out in these SSOPCs. Schools may consider whether offering a number of smaller contracts (dividing into lots) will enable small or medium sized contractors to compete. However, where several contracts are offered simultaneously for similar goods and services, the tendering process used must be that appropriate to the total amount of work offered/whole value of all lots.
- 11.6 If the quantities to be supplied are variable, or the duration of the contract is uncertain (e.g. option to extend) then the procurement process should be that applicable to the maximum likely contract value and length. The maximum duration of all contracts should be specified.
- 11.7 Where an order is placed on behalf of a confederation, partnership or consortium of schools, the process required will depend on the total value of the goods and services to be supplied, during the term of the contract (including all possible extensions), to all schools benefitting from the contract. The lead school should provide evidence to the other schools who are members of the group to demonstrate the requirements of these SSOPCs have been met.
- 11.8 For all significant purchases schools should consider "whole life" costs, including likely useful life, running costs (where relevant), maintenance and eventual disposal costs.

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<sup>18</sup> [tara.atkins@westsussex.gov.uk](mailto:tara.atkins@westsussex.gov.uk)

<sup>19</sup> Regulation 6 of the Public Contracts Regulations 2015

- 11.9 Where a contract is dependent on a specific source of funding, or other external condition, the contract should specify that it can be terminated if that source of funding is withdrawn, or if the external condition is satisfied, and should also specify the notice period required for termination in those circumstances.

### **SECTION 3 – WSCC PROCEDURES FOR CONTRACTS OF DIFFERENT VALUES**

#### **12. WSCC THRESHOLDS**

- 12.1 The current minimum requirements for Schools are set out in this Section 3 of these SSOPC's and summarised below. These apply to all purchases by Schools, whether capital or revenue expenditure, other than from a West Sussex County Council service or under a West Sussex County Council contract which is explicitly for the use of schools.

<b>Contract Value range</b>	<b>Minimum procurement requirements</b>
Up to £5,000	1 written quote or order under Framework Agreement or Dynamic Purchasing System (DPS).
£5,000 - £99,999	3 quotes or competitive procurement exercise or order under a Framework Agreement or DPS. A single tender may be obtained in exceptional cases and subject to approval.
£100,000 up to EU Threshold	Place order under an existing Framework Agreement/DPS or 3 quotes or competitive procurement exercise undertaken in accordance with these Standing Orders.
At or above the EU Threshold	Place order under an existing framework agreement/ DPS or competitive procurement procedure carried out in accordance with the Public Contracts Regulations 2015/Concession Contracts Regulations.

- 12.2 Before undertaking any procurement exercise, the Head Teacher must first consider if any existing West Sussex County Council contracts and/or framework agreements are available which can satisfy the Schools requirements and to which the School can legally access. Where the value of the proposed contract is £100,000 or more, the Head Teacher shall contact WSCC Procurement and Contracts Services for assistance in establishing if there are any existing WSCC contracts/framework agreements in place.

#### **13. CONTRACTS WITH A VALUE OF LESS THAN £5,000**

- 13.1 These SSOPC's do not impose specific procedural requirements for procurements valued at less than £5,000, but general requirements to provide value for money within budget and fairness still apply to such contracts.
- 13.2 Where the contract is valued at less than £5,000 the Governing Body should obtain a single written quotation (or more than one where practicable), or place an order with a supplier/contractor under a Framework Agreement.
- 13.3 The Head Teacher (or other School officer with delegated responsibility for the procurement) must, in relation to any contract with a value of less than £5,000, demonstrate and record on the Procurement File that the contract represents Value for Money.
- 13.4 The Head Teacher shall ensure that any decision relating to the sourcing route for a particular contract shall include an assessment of risk attaching to that decision and that analysis shall be recorded in writing and stored on the Procurement File or other retrievable storage location. The form of contract shall, comply with Standing Order 42.1.

#### **14. CONTRACTS WITH A VALUE BETWEEN £5,000 AND £99,999**

14.1 Subject to Standing Order 14.7, when procuring a contract valued between £5,000 and £99,999 the Head Teacher must:

- (a) use one of the procurement routes set out in Standing Order 15.1; or
- (b) with the prior written approval of the Governing Body, obtain a single tender or quote from a reputable supplier where the Head Teacher has sufficient knowledge of the market to be reasonably certain such an approach would elicit a quote representing Value for Money. A copy of the written approval from the Governing Body must be retained on the Procurement File. The Head Teacher must devise fair and transparent sourcing route based on sound commercial principles and designed to achieve Value for Money. The Head Teacher shall ensure that any decision relating to the sourcing route for a particular contract or service shall include an assessment of risk attaching to that decision and that analysis shall be recorded in writing and stored on the Procurement File.

14.2 Where the Head Teacher proposes to obtain a single tender or quote pursuant to Standing Order 14.1(b) the Head Teacher shall record in writing the reasons for only obtaining one tender or quote and the Governing Body shall record in writing that it is satisfied:

- (a) the services, supplies or works, can only reasonably be provided by that supplier; or
- (b) the supplier is part of an approved bulk purchasing arrangement, or consortium for the relevant type of procurement; or
- (c) it is a provision of services, supplies, or works by a statutory undertaker with a statutory right to provide such; or
- (d) several suppliers have been contacted and have confirmed in writing that they do not wish to quote; or
- (e) there are other genuine reasons. A Head Teacher must not normally accept urgency as a justification.

14.3 The Head Teacher must ensure that any requests for quotations accurately describe the School's requirements (see Section 8 Form of Contract). Evidence of quotations requested and received should be retained on the Procurement File.

14.4 Where the quotation procedure is being used particular care should be taken to avoid the unintended creation of an oral contract. Any quotations given orally must be subsequently confirmed in writing (if possible within 48 hours).

14.5 The Head Teacher must ensure that all contracts valued between £5,000 and £99,999 (whichever procurement method is used) are:

- (a) in writing and that the form of contract complies with Standing Orders 42 to 49; and
- (b) all suppliers/contractors from whom quotations or tenders are sought meet the requirements of Standing Order 28.3.

14.6 Whichever procurement method is used the Head Teacher must first consider if there is an existing Council contract or Framework Agreement which can be accessed by the School or if there are any other existing bulk purchasing arrangements or Framework Agreements, set up by another Contracting Authority (e.g. ESPO), available for use by the School.

#### **15. CONTRACTS VALUED BETWEEN £100,000 AND UP TO, BUT NOT EXCEEDING, THE EU THRESHOLDS**

15.1 The Head Teacher shall use one of the following procurement routes to award a contract valued between £100,000 and the appropriate EU threshold:

- (a) contract or Framework Agreement procured by another contracting authority (e.g. procured by West Sussex County Council or other School);
- (b) competitive procurement process advertised on OJEU and Contracts Finder;

- (c) competitive procurement process advertised on Contracts Finder; or
- (d) only if all other routes at (a) to (c) above are unavailable, without advertising the opportunity, a minimum of three quotations from suppliers, where the Head Teacher has sufficient knowledge of the market to be reasonably certain such an approach would elicit bids representing Value for Money.

It is expected that the primary procurement sourcing route for Schools shall be (a) above.

- 15.2 The Head Teacher must devise a fair and transparent sourcing route based on sound commercial principles and designed to achieve Value for Money, taking advice from WSCC Procurement and Contract Services. The Head Teacher shall ensure that any decision relating to the sourcing route for a particular contract or service shall include an assessment of risk attaching to that decision and that analysis shall be recorded in writing and stored on the Procurement File.
- 15.3 Where the Head Teacher is obtaining three quotations pursuant to Standing Order 15.1(d), the Head Teacher must ensure that any requests for quotations accurately describe the School's requirements (see Section 8 Form of Contract). Evidence of all quotations requested and received should be retained on the Procurement File.
- 15.4 Where the quotation procedure is being used particular care must be taken to avoid the unintended creation of an oral contract. Any quotations given orally must be subsequently confirmed in writing (if possible within 48 hours).
- 15.5 The Head Teacher must ensure that all contracts valued at £100,000 or more (whichever procurement method is used) are:
  - (a) in writing and that the form of contract complies with Standing Orders 42 to 49; and
  - (b) all suppliers/contractors from whom quotations or tenders are sought meet the requirements of Standing Order 28.3.
- 15.6 Whichever procurement method is used the Head Teacher must first consider if there is an existing Council contract or Framework Agreement which can be accessed by the School or any other existing bulk purchasing arrangements or Framework Agreements, set up by another Contracting Authority (e.g. ESPO), available for use by the School. For all contracts valued at £100,000 or more the School must first obtain advice from WSCC Procurement and Contracts Services and/or WSCC Legal Services (Commercial Legal Team) before accessing any existing contract, Framework Agreement or Dynamic Purchasing System.
- 15.7 If the Head Teacher decides to seek a tender or tenders pursuant to Standing Order 15.1 (a) or (b) the procedures set out at Section 4 of these Standing Orders must be followed.

## **16. CONTRACTS THAT MEET OR EXCEED THE EU THRESHOLD**

- 16.1 Where the estimated value of the contract is at or above the relevant EU Threshold the Public Contracts Regulations 2015 must be complied with or in the case of a works or services concession contract, the Concession Contracts Regulations 2016. Advice must be sought from the WSCC Head of Procurement and Contracts Services and Legal Services (Commercial Legal Team) prior to commencing any procurement for an above EU Threshold contract.

## **SECTION 4 – COMPETITIVE PROCUREMENT PROCEDURES**

### **17. PUBLIC NOTICE/ADVERTISING**

- 17.1 Subject to Standing Order 17.6 below, the Governing Body must give public notice of its intention to enter into a contract and invite applications from persons interested in tendering. The public notice must:
  - (a) specify the nature and purpose of the contract, or framework agreement in question; and
  - (b) invite tenders, or submissions for inclusion in the framework agreement; and
  - (c) specify the date by which responses must be received, which for above EU Threshold contracts must be the minimum timescale as set out in PCR 2015 and for below EU Threshold contracts must give bidders a minimum of ten (10) days from the date of publication of the notice.

- 17.2 The public notice to be published pursuant to Standing Order 17.1 must appear in:
- 17.2.1 at least one relevant trade newspaper or journal circulating amongst potential contractors for the contract or class of contract; and
  - 17.2.2 where the contract is valued at £25,000 or more and is to be advertised in accordance with these School's Standing Orders on Procurement and Contracts then the public notice should also be published on Contracts Finder<sup>20</sup>.
  - 17.2.3 where the contract is valued at or above the relevant EU threshold a notice must be published:
    - 17.2.3.1 in the Official Journal of the European Union (OJEU)<sup>21</sup> using the Council's electronic tendering available through WSCC Procurement and Contracts Services; and
    - 17.2.3.2 Contracts Finder.
- 17.3 Contracts which meet or exceed the EU threshold set out in the PCR 2015 must be advertised on the OJEU by publishing a Contract Notice or, where advised, a Prior Information Notice (PIN) as a call for competition. The Head Teacher must take advice from WSCC Procurement and Contract Services before publishing any document on OJEU. Where the Contract is valued at £100,000 or more, the Head Teacher is required to engage with and follow advice from WSCC Procurement and Contracts Services in any event and will be advised on publishing documents on OJEU.
- 17.4 Where an OJEU notice is required, the OJEU notice must be published before any other notice or advertisement and any other notice or advertisement should not contain any information not also contained in the OJEU Notice.
- 17.5 All contracts which are advertised on OJEU shall also be advertised on Contracts Finder within 24 hours of the time the School becomes entitled to post it, that is after either:
- (a) it appears on OJEU;
  - (b) it has not appeared but 48 hours have elapsed from the time the EU Publications Office confirmed receipt of the notice to the School.
- 17.6 A public notice will not be required where:
- (a) the estimated value of the Contract is less than £100,000; or
  - (b) the goods or services are obtained from a Framework Agreement or Dynamic Purchasing System; or
  - (c) the School accesses an existing West Sussex County Council Contract.
- 17.7 All Procurement Documentation must be available from the time the public notice is published either in accordance with this Standing Order 17 or on OJEU. Therefore, no advertisement should be placed until the Procurement Documentation is complete. The Head Teacher must ensure the Contract Notice includes a specified location where interested parties can electronically access all Procurement Documentation.
- 17.8 The School may use a Prior Information Notice (PIN) as a call for competition when using the restricted or competitive procedure with negotiation, subject to following advice from Procurement and Contract Services before publishing any PIN.
- 17.9 The Head Teacher is responsible for ensuring all public notices and publications on OJEU and Contracts Finder are published in accordance with these rules and following advice from WSCC Procurement and Contract Services.
- 17.10 The Head Teacher shall ensure that all Procurement Documents for contracts that are at or above the relevant EU Threshold are available online free of charge without restriction from the time the OJEU Notice is published (or an ITCI is sent when a PIN is used as a call for competition).

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<sup>20</sup> <https://www.gov.uk/contracts-finder>

<sup>21</sup> <https://www.ojeu.eu/>

## **18. REQUEST FOR QUOTE OR INVITATION TO TENDER**

- 18.1 Whenever a quotation or tender is to be obtained under these Standing Orders (including Standing Order 14) the request for quote or invitation to tender (as applicable) must specify:
- 18.1.1 the nature and purpose of the contract for which the tender is invited;
  - 18.1.2 the latest date and time by which tenders must be received;
  - 18.1.3 that the School reserves the right not to accept that tender or any tender;
  - 18.1.4 include a description of the goods, supplies, services or works the School requires as set out in Standing Orders 43 and 44;
  - 18.1.5 that the form and content of any subsequent contract will be as specified in Standing Orders 42 to 49;
  - 18.1.6 the award criteria that will be applied by the School when evaluating the quotation(s)/tender(s);
  - 18.1.7 anonymised details of any staff that may be in scope to TUPE transfer;
  - 18.1.8 in the case of contracts of an estimated value not exceeding £100,000 the Head Teacher who will open it;
  - 18.1.9 that the tender envelope must be identified as a tender for the particular contract using the address label provided by the Head Teacher, but must not bear any name or mark (including a franking stamp) indicating the identity of the tenderer; and
  - 18.1.10 any other details as advised by WSCC Procurement and Contract Services where the Contract in question meets or exceeds the relevant EU Threshold or £100,000 (whichever is the lower);

## **19. OPEN PROCEDURE<sup>22</sup>**

- 19.1 The open procedure requires a public notice to be placed in accordance with Standing Order 17 and for all interested parties to receive an invitation to tender document (containing all Procurement Documentation) and to be able to tender.
- 19.2 In an open procedure there is no short listing stage (as in the restricted procedure) and all interested parties can submit a tender for the contract.
- 19.3 Where the Contract is below the relevant EU Threshold and the School wishes to follow the open procedure set out in the PCR 2015 or similar it shall be made clear to bidders that the School is choosing to follow a "pseudo open" procedure rather than the fully regulated open procedure.
- 19.4 Where the Contract is valued at or above the relevant EU Threshold, the PCR 2015 shall be adhered to by the School and the Head Teacher shall be required to follow advice from WSCC Procurement and Contracts Services
- 19.5 Schools must not carry out any post tender negotiations with any bidder(s) when following the Open Procedure under the PCR 2015 or otherwise following a "pseudo open" procedure for a contract that is valued less than the relevant EU Threshold.

## **20. RESTRICTED PROCEDURE**

- 20.1 The restricted procedure follows a pre-qualification/selection process following the publication of the public notice:
- (1) any interested party can request to participate in the tender exercise by submitting an expression of interest to the School;
  - (2) those parties that expressed an interest are requested to complete a selection questionnaire;
  - (3) the School invites only those who have passed the selection stage to submit a tender.

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<sup>22</sup> The appropriate procedure to use should be considered on a case by case basis, as it will depend on factors that are specific to each procurement.

- 20.2 All Contracting Authorities (including Schools) are prohibited from using a pre-qualification/selection stage for contracts which are valued below £164,176<sup>23</sup>. The School can only ask Candidates to answer suitability assessment questions if each question is relevant to the subject matter of the procurement and is proportionate. For contracts between £100,000 and £164,176, WSCC Procurement and Contracts Services will advise on suitability assessment questions.
- 20.3 Where the Contract is valued at or above the relevant EU Threshold the PCR 2015 shall be adhered to by the School, following advice from WSCC Procurement and Contracts Services.
- 20.4 Schools must not carry out any post tender negotiations with any bidder(s) when following the Restricted Procedure under the PCR 2015 or otherwise following any type of "pseudo restricted" procedure (with suitability assessment) for a contract that is valued less than the relevant EU Threshold.

## **21. ABOVE EU THRESHOLD**

- 21.1 For public contracts equal to or greater than the EU Threshold, the School shall:
- (a) advertise the contract on OJEU using one of the procurement routes mandated by the PCR 2015; or
  - (b) where appropriate and lawful, use an existing contract or Framework Agreement which was procured in compliance with the PCR 2015 (or if procured before 2015, the Public Contract Regulations 2006).
- 21.2 Schools shall not be permitted to carry out any type of negotiated or competitive dialogue procedure under the PCR 2015 without the express written agreement of the WSCC Director of Law, Assurance and Strategy and must engage with WSCC Procurement and Contracts Services prior to commencing any such procurement procedure.

## **22. CONTRACTS SUBJECT TO THE 'LIGHT TOUCH REGIME'**

- 22.1 Social care, education services and other services which are listed in Schedule 3 to the PCR 2015 are subject to the PCR 2015. However, the School is not obliged to use one of the procedures listed in the PCR 2015 to award these contracts. Instead, the procurement procedure must comply with the principles of regulation 76 of the PCR 2015 (commonly referred to as the 'light touch regime'). The Head Teacher shall take advice from WSCC Procurement and Contracts Services on the most appropriate approach for "light touch" contracts that are at or above the relevant EU Threshold.

## **23. CONTRACTS RESERVED FOR SOCIAL ENTERPRISES AND THE EMPLOYEE-OWNED SECTOR**

- 23.1 The Head Teacher may reserve participation in procurement processes for limited types of services contracts to certain qualifying organisations from the employee ownership and voluntary sectors. The maximum duration of contracts awarded under this power is three years.
- 23.2 The Head Teacher must obtain written approval from the WSCC Director of Law, Assurance and Strategy and the WSCC Head of Procurement Services before commencing a procurement in reliance on this Standing Order.

## **24. USE OF NEGOTIATED PROCEDURE WITHOUT PRIOR PUBLICATION OF AN OJEU NOTICE FOR ABOVE EU THRESHOLD CONTRACTS**

- 24.1 In the limited circumstances listed in regulation 32 of the PCR 2015, the School may dispense with a Contract Notice and engage in negotiations with a single supplier under the negotiated procedure. The Responsible Officer must receive written authorisation from the WSCC Director of Law, Assurance and Strategy before using this procedure and must engage WSCC Procurement and Contract Services before undertaking any negotiation.

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<sup>23</sup> Regulation 11 of the Public Contracts Regulations 2015. For the purposes of Reg. 11 this threshold applies to services, light touch regime and works contracts.

## SECTION 5 – STANDING TO CONTRACT AND AWARD CRITERIA

### 25. USE OF PRE-QUALIFICATION/SELECTION QUESTIONNAIRES

- 25.1 The Head Teacher shall apply minimum standards of experience, reputation and economic standing to suppliers/contractors to test their suitability to bid for a School contract.
- 25.2 All the methods and criteria used for assessing the suitability of suppliers/contractors shall be transparent, objective and non-discriminatory.
- 25.3 The Head Teacher shall not use a pre-qualification questionnaire (“PQQ”) or selection questionnaire (“SQ”) for contracts with a value less than the EU threshold for supplies and services.
- 25.4 For contracts at or above the EU threshold for supplies and services suitability is tested by means of a Selection Questionnaire (“**SQ**”) (which has replaced the previously known PQQ). The Head Teacher must use either the Councils Standard (above threshold) Selection Questionnaire<sup>24</sup> or the Government’s standard SQ<sup>25</sup> and adhere to its statutory guidance for all procurements of contracts at or above the EU threshold for supplies and services.
- 25.5 The following table provides a summary of the rules on the use of SQs:

Contract type and value	Rules on use of SQ
Contracts up to £25,000	SQ must not be used.
Contracts valued between £25,000 and the EU threshold for supplies and services whether the contract is for goods, services or works	Use of SQ prohibited. The School may <u>only</u> ask Candidates suitability assessment questions which are relevant to the subject-matter of the procurement and proportionate having regard to any guidance issued by the Cabinet Office.
Contracts at or above the EU threshold for supplies and services for goods or the EU threshold for works.	The School must adhere to the guidance issued by the Cabinet Office on qualitative selection. The School shall adopt the standard SQ without deviation.
Contracts above the EU threshold for supplies and services but: For Schedule 3 services, below the relevant EU threshold. For works contracts, below the EU threshold for works contracts	Head Teachers shall either use the Standard SQ or an alternative means of assessing tenderers’ suitability which has been agreed by WSCC Procurement & Contract Services.
Contracts for Schedule 3 services contracts at or above the EU threshold for Schedule 3 contracts	The School must use the standard SQ and adhere to the government guidance to the extent that it is relevant to the procedure which the School has chosen to run in compliance with regulation 76.

- 25.6 The standard Selection Questionnaire asks potential suppliers/providers to initially self-certify their status against the exclusion grounds and selection questions. Schools must accept a supplier/provider’s self-assessment of compliance with the exclusion and selection criteria at the early stages of procurement. The evidence to verify the self-certification is only required when the winning bidder(s) have been identified, or at an earlier stage if that is necessary to ensure the proper conduct of the procedure.

### 26. SUITABILITY ASSESSMENT

- 26.1 For contracts that are valued below the EU Threshold the School can only ask Candidates to answer suitability assessment questions if each question is relevant to the subject matter of the procurement and proportionate.

<sup>24</sup> Available from WSCC Procurement and Contracts Services - [procurement@westsussex.gov.uk](mailto:procurement@westsussex.gov.uk)

<sup>25</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/558520/PPN\\_8\\_16\\_StandardSQ\\_Template\\_v3.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/558520/PPN_8_16_StandardSQ_Template_v3.pdf)

- 26.2 A suitability assessment question is a question which relates to information or evidence that the School requires for the purpose of assessing whether Candidates meet requirements or minimum standards of suitability, capability, legal status or financial standing.

## **27. ELIGIBILITY TO BID**

- 27.1 Suppliers who fail to meet all of the Schools's minimum standards of reputation, technical ability, experience or economic and financial standing as specified in the SQ (or suitability assessment for below EU Threshold contracts) and accompanying documents shall be excluded from the procurement process.
- 27.2 Where the supplier is being excluded because one of the exclusion grounds in regulation 57 of the PCR 2015 applies, but provides evidence in support of its reliability despite the existence of a relevant ground of exclusion, the Head Teacher must consider that evidence and determine whether to exclude that supplier.
- 27.3 The Head Teacher shall consult with the WSCC Director of Law, Assurance and Strategy before reaching any decision under Standing Order 27.2.

## **28. ASSESSING PAST EXPERIENCE AND FINANCIAL STANDING**

- 28.1 The Head Teacher shall ensure suppliers' past experience and technical ability are assessed, for all contracts.
- 28.2 When assessing the suppliers' financial standing, the Head Teacher shall not require prospective tenderers to have an annual turnover of more than twice the estimated contract value, unless otherwise agreed with the WSCC Director of Law, Assurance and Strategy.
- 28.3 Only those suppliers who meet the Schools's minimum requirements of economic and financial standing and technical and professional ability shall be invited to participate in a tender process or awarded the contract.
- 28.4 All assessment of supplier's financial standing must be conducted by the Council's Commercial Finance team (or such other service unit designated from time to time to undertake this activity).

## **29. AWARD CRITERIA**

- 29.1 The Head Teacher shall adopt award criteria which are fair, transparent, proportionate and appropriate to the subject matter of the contract.
- 29.2 The Head Teacher shall award the contract to the most economically advantageous tender ("MEAT"), being the tender that represents best Value for Money applying the award criteria. This includes the ability to take into account environmental, social and economic considerations as well as whole life cost of the product or service being procured.
- 29.3 The award criteria and weightings of each must be determined in advance and disclosed in the invitation to tender for the contract.
- 29.4 The Head Teacher shall adopt evaluation methodologies that are robust, have been tested to ensure they are appropriate for the procurement in question, and transparent.

## **SECTION 6 – TENDER PROCESS**

### **30. OPENING TENDERS**

- 30.1 All tenders undertaken for contracts with a value of £100,000 and above must be conducted through the Council's mandated e-tendering portal except as permitted in these Standing Orders or with the prior written approval of the WSCC Head of Procurement and Contract Services.
- 30.2 Tenders for contracts valued at less than £100,000 may be conducted outside the Council's e-tendering portal.
- 30.3 Where the Head Teacher invites tenders in hard copy (for contracts with a value below £100,000), the Head Teacher must ensure that all the tenders received are opened:
- 30.3.1 after the deadline for receipt of tenders has expired; and
  - 30.3.2 at the same time by two members of staff and/or the Governing Body;

30.3.3 after they are opened, the tenders must be listed in the tender register and the list must be signed by both persons who witnessed the opening of the tenders.

## **31. CORRECTION OF ERRORS AND LATE TENDERS**

- 31.1 All tenders must comply with the conditions set out in the Procurement Documents. Tenderers should be advised that any failure to adhere to the specific rules applicable to the tender in question could result in their tender being rejected.
- 31.2 The Head Teacher may reserve the right in the Procurement Documents to accept late submissions or documents forming part of the tender at the School's discretion, for example, where:
- 31.2.1 the delay was caused by a mistake or failure of the School; or
  - 31.2.2 the document or submission in question clearly pre-dated the deadline for receipt of tenders and the decision not to exclude the tenderer would not unduly favour any or disadvantage the other Candidates.
- 31.3 In all cases, the School shall adhere to the rules it established in the Procurement Documents and document any decision to permit a late or corrected tender.
- 31.4 The following authorisation must be obtained before a Head Teacher can accept a late or corrected tender:
- 31.4.1 for contracts valued at £100,000 or less: the Governing Body; and
  - 31.4.2 for contracts valued at £100,000 or more: the WSCC Head of Procurement and Contract Services as well as the Governing Body.
- 31.5 If the School has any doubt as to whether it can accept a late tender, the Head Teacher shall refer the matter to the Council's Director of Law, Assurance and Strategy for a decision.
- 31.6 If mistakes in pricing are discovered and it is clear that this is due to miscalculation then the Tenderer may be given the opportunity to revise the mistake as long as it does not lead to the total tender price which was originally submitted from being increased or decreased. Where the mistake or error is in relation to the total price the Tenderer should be given the opportunity of confirming the price submitted or be allowed to withdraw the tender. No other form of amendment to price is allowed. Where the Head Teacher has any queries or concerns regarding correction of errors to pricing they should contact WSCC Procurement and Contracts Services.
- 31.7 Where the Head Teacher suspects a tender of being abnormally low, the School has a duty to investigate the reasons for this. A Head Teacher may not reject an abnormally low tender without first giving the Tenderer the opportunity to explain the tendered price. The Head Teacher should contact WSCC Procurement and Contracts Services if they have any concerns regarding a possible abnormally low tender.

## **32. CLARIFICATIONS RAISED BY SUPPLIERS**

- 32.1 The Head Teacher shall maintain a Clarification Log containing a list of questions raised by suppliers/contractor during the course of a procurement process, with the School's responses, to which all Candidates or Tenderers shall have unrestricted access. Where Procurement and Contract Services is involved with the conduct of a particular procurement process, it may maintain the Clarification Log itself and will notify the Head Teacher of that approach.
- 32.2 Where a clarification raises an issue which leads to the amendment of one of the Procurement Documents, the School shall consider whether the deadline for submission of responses should be extended, or the procurement process otherwise revised to ensure equal treatment of suppliers, and take action accordingly.

## **33. EVALUATION**

- 33.1 The Governing Body shall appoint evaluators who have the necessary skills and experience to undertake the role.
- 33.2 Where the procurement process is in relation to a contract valued at £100,000 and above, WSCC Procurement and Contract Services shall provide appropriate guidance, advice and support on all aspects of tender evaluation and the Head Teacher shall have regard to all such guidance.

- 33.3 Tenders must then be evaluated in accordance with the published evaluation method and award criteria. Evaluation of any mandatory requirements must be completed before full evaluation of the Tender is undertaken.
- 33.4 A written record of evaluation scores and justification of scores for all Tenders should be kept ensuring all scores and comments are relevant to the requirement, specification, objectives of the contract and award criteria.

#### **34. CONTRACT AWARD**

- 34.1 All contracts shall be awarded in accordance with the criteria set out in the Procurement Documents.
- 34.2 A Head Teacher may elect to not accept a tender where the tender price cannot be accommodated within the School's allocated budget. The Head Teacher must consult with the Governing Body to determine whether the procurement is to be abandoned or additional funding sought.
- 34.3 For contracts with a value at or above the EU Thresholds, the Head Teacher shall adhere to the contract award procedures set out in the PCR 2015 and observe a standstill period before entering into the contract. The standstill period will normally end at midnight at the end of the tenth day after the date the School sends notice to the tenderers, electronically or by fax, that it has made an award decision.

#### **35. CONFLICTS OF INTEREST**

- 35.1 The Governing Body shall ensure that officers involved in procurement processes in their School are familiar with the Guidance on Propriety and Official Conduct for Officers (available from WSCC HR).
- 35.2 Any Head Teacher or other School officer involved in a procurement shall:
- 35.2.1 comply with the Guidance on Propriety and Official Conduct for Officers (the Council's Code of Conduct for Employees); and
  - 35.2.2 disclose in writing to their Governing Body or the Council's Director of Law, Assurance and Strategy any direct or indirect, financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of a procurement procedure.
- 35.3 Where a Head Teacher or other School officer discloses such a conflict of interest the Governing Body shall before commencing the procurement exercise, in consultation with the WSCC Director of Law, Assurance and Strategy make arrangements to allocate the role to another person and shall consider whether any changes to the procurement process should be made to address any issues arising from the conflict.
- 35.4 Any Head Teacher or other School officer involved in a procurement shall take appropriate measures to ensure competition is not distorted where a Candidate or Tenderer, or an undertaking related to that Candidate or Tenderer, has advised the School on the procurement in question or been involved in the preparation of the procurement.
- 35.5 If during the course of a procurement an issue arises upon which these SSOPC are silent or incomplete, the Head Teacher shall refer the matter to the WSCC Director of Law, Assurance and Strategy for determination.
- 35.6 Head Teachers must ensure that all Tenders received include an anti-collusion declaration and Certificate as to Canvassing for each bidder stating that they have not colluded with any other party in preparing and offering a tender and that they have not:
- i. communicated to a person other than the person calling for those tenders the amount or approximate amount of the proposed tender except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain insurance premium quotations required for the preparation of the tenders;
  - ii. enter into any agreement or arrangement with any other person that he shall refrain from tendering or as to the amount of any tender to be submitted;

- iii. offer or pay or give or agree to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender; or
  - iv. any act or thing of the sort described above.
- 35.7 If a Head Teacher suspects that a Tenderer has colluded with or canvassed a third party he/she must report it to the WSCC Director of Law, Assurance and Strategy for determination.

## **SECTION 7 - SPECIFIC TYPES OF CONTRACTS**

### **36. FRAMEWORK AGREEMENTS**

- 36.1 A framework agreement is an 'umbrella agreement' that sets out the terms (particularly relating to price, quality and quantity) under which individual specific contracts (call-offs) can be made throughout the period of the framework agreement. Framework arrangements therefore have two (2) components: (1) the framework agreement and (2) one or more specific contracts made under that framework agreement.
- 36.2 All Framework Agreements for contracts with a value above the relevant EU threshold set out in the PCR 2015 shall be awarded in accordance with the PCR 2015. Where the School wishes to procure an above EU threshold Framework Agreement the Head Teacher must seek advice from WSCC Procurement and Contract Services and WSCC Legal Services Commercial Team.
- 36.3 Framework Agreements valued at below the relevant EU threshold shall be awarded in accordance with these Standing Orders.
- 36.4 Head Teachers shall consult WSCC Procurement and Contract Services before using a Framework Agreement set up by another Contracting Authority and the validity of the Framework Agreement and its contractual terms must be approved by the Commercial Legal Team.

### **37. CALL-OFF CONTRACTS**

- 37.1 A School may enter into a call-off contract provided that the purpose and terms and conditions of the contract have been made clear in the original public notice and in tender documentation.
- 37.2 The existence of a call-off contract, or consortium purchasing arrangements does not remove from the Head Teacher responsibility for ensuring that the School achieves Value for Money in the procurement of its services, supplies, or works. Appropriate forms of testing for Value for Money should be carried out by making and recording comparisons with market prices available elsewhere.
- 37.3 The period of a call-off contract must not exceed four years, save in exceptional cases where duly justified, in particular, by the subject of the contract. Where a Head Teacher wishes to award a call-off contract for more than four years this shall be subject to prior approval of the WSCC Director of Law, Assurance and Strategy and the Head of Procurement and Contracts Services.
- 37.4 Where the procurement comes within the scope of PCR 2015 the rules relating to the use of Framework Agreements must be followed.

### **38. CONSULTANCY CONTRACTS**

- 38.1 Before engaging a Consultant or other specialist professional, the Head Teacher must refer to, and ensure compliance with, the Council's Procurement Policy on Buying Consultancy Services and the related documents and the HR Policy on the Use of Self-Employed Consultants and "off payroll" workers, as may be updated from time to time
- 38.2 All such engagements of an aggregate value of £50,000 or more must be competitively tendered.
- 38.3 The Head Teacher shall be responsible for ensuring the engagement of the consultant (including through any agency or consultancy services company) will comply with IR35 legislation<sup>26</sup> and for the Employment Status for Tax Check<sup>27</sup> to be undertaken and a satisfactory result obtained prior to the commencement of the contract. The Head Teacher shall keep a copy of the Employment Status for Tax Check on the Procurement File.

<sup>26</sup> <https://www.gov.uk/guidance/ir35-find-out-if-it-applies>

<sup>27</sup> <https://www.gov.uk/guidance/check-employment-status-for-tax>

## **39. CONTRACTS ADMINISTERED BY CONSULTANTS**

- 39.1 It shall be a condition of engagement of any architect, engineer, surveyor or other consultant who is responsible to the School for the administration of a contract on the School's behalf that he/she will:-
- 39.1.1 comply with these Standing Orders as if he/she was a Head Teacher, subject to the modification that the procedure to be followed in inviting and opening tenders will be approved in advance by the appropriate Head Teacher and be in accordance with these Standing Orders;
- 39.1.2 at any time during the carrying out of the management of a contract produce to the Head Teacher (or representative), on request, all the records maintained by the consultant in relation to that contract and on completion of a contract, pass all such records to the appropriate Head Teacher.

## **40. BUILDING/CONSTRUCTION CONTRACTS**

- 40.1 These SSOPC apply to all works, building and construction contracts.
- 40.2 Schools undertaking construction projects should be aware of their responsibilities under the Construction (Design and Management), or CDM Regulations 2015. Where the School is the 'client' for the purposes of the CDM Regulations 2015, the School must (a) notify the Health & Safety Executive of a "notifiable project" (b) appoint a principal designer and principal contractor, where there is more than one contractor (including sub-contractors) (c) take reasonable steps to ensure that the principal designer and principal contractor comply with their duties under the CDM Regulations (d) ensure that a construction phase health and safety plan is prepared by the principal contractor and (e) ensure that a health and safety file is prepared by the principal designer. The aforementioned are most of the key CDM duties. Further information and guidance is available from WSCC Commercial Legal Team.<sup>28</sup>
- 40.3 Works contracts, as defined in Schedule 2 of the PCR 2015, which are valued at or above the EU threshold for works must be procured in accordance with the PCR 2015.
- 40.4 Schools may choose to follow the procurement procedures set out in the PCR 2015 for works contracts that are below the EU threshold for works however the public notice and associated Procurement Documents should make it clear that the contract is below the EU threshold and the School is choosing to voluntarily follow a "pseudo" open/restricted procedure.
- 40.5 If a construction contract is valued at £1,000 or more (but below £100,000) the School shall follow the 'Self-Help' process<sup>29</sup>. Where the School has purchased the supportive Property Maintenance SLA with the Council, the Head Teacher should contact the School's appointed building surveyor for advice on all construction/building works irrespective of value and prior to commencing the procurement exercise.
- 40.6 If the works are in relation to mechanical and/or electrical systems, the works should be notified, in advance, to the Council through the "Self-Help" system and the Head Teacher should contact their appointed building surveyor and building services engineer for advice prior to procuring such mechanical/electrical works. Further guidance can be sought from the Self-Help Team.<sup>30</sup> If the works are in relation mechanical and/or electrical systems and their value is less than £1,000 and the School uses the services of the Corporate Engineering Maintenance Contractor, the School need not complete a "Self-Help" application. However, the School must still notify the Council of such works in advance as part of the process of requesting the services of the Corporate Engineering Maintenance Contractor.
- 40.7 Where a construction project requires the contractor to design all or part of the works and that design work is sub-contracted to a third party ("Sub-Contractor") or where the School employs a professional to undertake design work on behalf of the School (or Council if a Self-Help project), the Sub-Contractor and/or professional, as appropriate shall be required to enter into a collateral warranty in the School's favour (or Council's favour if a Self-Help project) and the tender documents shall include the warranty pro-formas (available from WSCC Commercial Legal Team).<sup>31</sup>

<sup>28</sup> Email - [contractsandprocurement.legal@westsussex.gov.uk](mailto:contractsandprocurement.legal@westsussex.gov.uk)

<sup>29</sup> <http://schools.westsussex.gov.uk/Page/1600>

<sup>30</sup> contact: Sarah Greetham- [sarah.greetham@westsussex.gov.uk](mailto:sarah.greetham@westsussex.gov.uk)

<sup>31</sup> Email - [contractsandprocurement.legal@westsussex.gov.uk](mailto:contractsandprocurement.legal@westsussex.gov.uk)

- 40.8 The limits of indemnity specified in the table in SO 45.1 may not be sufficient for construction contracts, depending upon the project specific nature of each contract. For guidance on appropriate levels of indemnity contact WSCC Legal Services Insurance Team.<sup>32</sup>

#### **41. LEASE, RENTAL OR HIRE AGREEMENTS**

- 41.1 If a School is proposing to enter into any lease, rental or hire agreement for any supplies or goods (e.g. photocopiers) the Governing Body is responsible for ensuring that such agreement does not constitute a finance lease or is otherwise defined as borrowing which is outside the powers of the School.
- 41.2 Schools are required to consult with WSCC Finance<sup>33</sup> before entering into any leasing, rental or hire agreement and to have regard to any advice given.
- 41.3 If any lease, rental or hire agreement contains any provisions regarding cash back payments (however described) and/or settlement costs on returned equipment, such agreement is beyond the School's powers.
- 41.4 Schools are permitted to enter into an "operating lease" only, following advice from WSCC Finance and, if required, WSCC Commercial Legal Team. Operating leases will generally have the character of a rental agreement, with the leasing/finance company usually being responsible for the repairs and maintenance of the asset and where the lease does not transfer substantially all the risks and rewards incidental to ownership of an asset to the person taking out the lease.
- 41.5 Distinguishing between a finance lease and an operating lease can be complex and as such Schools are encouraged to refer any lease agreements to the Council for a view as to whether they are operating leases or finance leases. Schools should not rely on the word of the equipment supplier and/or the leasing/finance company that a lease/hire agreement is classified as a particular class of lease and should refer any proposed lease agreements to the Council for review.
- 41.6 Schools should ensure that they are able to meet, and comply with, all of terms and conditions of an operating lease agreement and if Schools are unsure about the terms and conditions in a lease agreement they should refer the lease agreement to the WSCC Legal Services Commercial Team for review.
- 41.7 Schools are required to comply with these SSOPC in relation to any lease, rental or hire agreement and the Governing Body must be satisfied that any such proposed agreement offers Value for Money.

### **SECTION 8 – FORM OF CONTRACT**

#### **42. FORM OF CONTRACT**

- 42.1 For contracts valued at £5,000 or less, the Head Teacher can choose to accept the supplier's standard terms, provided that such terms are fair and reasonable in the circumstances and provide Value for Money. The form of contract must be recorded in its final agreed form and shall contain, as a minimum the items required by Standing Order 43.1, 44.1.1 - 2. Contracts for services and works (but not supplies) which are valued at less than £5,000 still require the appropriate insurance provisions in accordance with Standing Order 45.1.
- 42.2 The WSCC Director of Law, Assurance and Strategy is responsible for providing or approving all forms of contract with a value at or above £100,000. The WSCC's Commercial Legal Team may agree that a general form of contract is appropriate for specified uses and/or provide standard templates for use by the School for use by the School for any contract valued at less than £100,000.
- 42.3 All contracts with a value exceeding £5,000 must be written or in an electronic form capable of providing a permanent record of the intentions of the parties to the contract.
- 42.4 The Head Teacher shall be responsible for ensuring that every contract awarded by the School with a value over £5,000 includes the mandatory requirements set out in this Section 8 of the SSOPC.

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<sup>32</sup> Sharon Andrews - [sharon.andrews@westsussex.gov.uk](mailto:sharon.andrews@westsussex.gov.uk)

<sup>33</sup> Contact Simon Hopkins – [simon.s.hopkins@westsussex.gov.uk](mailto:simon.s.hopkins@westsussex.gov.uk)

- 42.5 Where contract terms are to be published by the School in connection with any competitive tender or single tender process, the Head Teacher must ensure that the proposed form of contract: (a) where the value of the contract is below £100,000, complies with Standing Orders 42.1, 42.3, 42.4 and 44.1 (as applicable) or (b) where the value of the contract is at or above £100,000, it has been approved by the WSCC Commercial Legal Team, before it is made accessible to Tenderers or any other external interested party. For the sake of clarity the contract must be prepared in advance of carrying out a procurement process and provided to all service providers/suppliers at the same time as requesting a quote or issuing the Invitation to Tender.
- 42.6 The Head Teacher shall ensure that an electronic copy of every concluded contract is kept on the Schools Procurement File and shall provide details of the contract to WSCC Procurement and Contract Services for entry onto the Council's Contract Register and shall ensure that appropriate arrangements are made for the safe storage of original contract documents. With regard to the options available for the safe storage of original contract documents the Head Teacher shall seek advice from WSCC Legal Services, if required.
- 42.7 The Head Teacher must require the completion of a performance bond in the Council's standard 'on demand' wording (for the bond document contact WSCC Commercial Legal Team<sup>34</sup>) or parent company guarantee, approved by the WSCC Commercial Legal Team for all works contracts in excess of £250,000 in value or such other limit as may be specified by the Director of Law, Assurance and Strategy in relation to a particular procurement. The bond document shall be included in the Procurement Documents issued to Tenderers.
- 42.8 With regard to the need for a performance bond for a contract which is not a works contract or for a works contract below the threshold of £250,000, the Head Teacher in consultation with the School's Chair of Governors and Chair of the School's Finance Committee (or equivalent) shall determine, on a case by case basis, whether a performance bond shall be required.

#### **43. SERVICE SPECIFICATIONS<sup>35</sup>**

- 43.1 The Head Teacher shall ensure the service specification for the contract:
- 43.1.1 clearly and effectively sets out the obligations on the supplier to deliver to the School's requirements;
  - 43.1.2 where applicable, complies with the requirements of the PCR 2015 in respect of technical specifications; and
  - 43.1.3 is legally enforceable, taking advice from WSCC Commercial Legal Team where necessary.
- 43.2 Where WSCC Procurement and Contracts Services are carrying out the procurement process on behalf of the School (for contracts at or above £100,000) they shall provide any advice and guidance in relation to the specification for the Contract and the Head Teacher shall follow any such advice and guidance.

#### **44. GENERAL CLAUSES**

- 44.1 Every contract must clearly specify:
- 44.1.1 the services, supplies/goods or works to be provided together with applicable standards and performance level(s);
  - 44.1.2 the price to be paid, with a statement of discounts and other deductions, including any Value Added Tax payable and any provisions for price variations, whether by indexation or other means;

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<sup>34</sup> [contractsandprocurement.legal@westsussex.gov.uk](mailto:contractsandprocurement.legal@westsussex.gov.uk)

<sup>35</sup> Guidance on how to write service specifications can be found at: <http://schools.westsussex.gov.uk/Services/3668>

- 44.1.3 the duration of the contract including any specific dates by which any aspects are to be performed, together with any possible extensions of the contract term. Contracts should not normally exceed five years, or seven years with extensions, but contracts may be set for longer periods where the relevant industry practice, or partnership arrangements to be entered into, make it in the interests of the School to do so. The WSCC Head of Procurement and Contract Services must be consulted on any business case for proposing a contract term longer than 7 years and the reasons for doing so must be recorded in the Procurement Document;
- 44.1.4 in the case of all building and engineering contracts exceeding £100,000 in value, the liquidated damages to be paid by the contractor if the contract is not completed on a specified date. A provision for liquidated damages may be included in contracts valued at £100,000 or less; and
- 44.1.5 the service provider/contractor must obtain the written permission of the Head Teacher before assigning, novating, sub-letting or otherwise transferring the contract or any part of the contract to any other party.

## 45. INSURANCE LEVELS

- 45.1 Every contract must clearly specify that the supplier shall hold and maintain for the duration of the term of the contract the following levels of insurance cover for each single incident:

Type of insurance cover	Minimum insured for each
Public liability	£10 million
Employer's liability	£5 million
Product liability	£2 million
Professional indemnity	£2 million

- 45.2 The WSCC Director of Law, Assurance and Strategy may specify higher levels of insurance cover as he deems fit for particular contracts or types of contracts and may also agree to lower levels of insurance cover provided the Head Teacher provides an account of the reasons for the lower level of cover and includes an assessment of risks associated with the contract. For guidance on appropriate levels of insurance cover or to request consideration of lower levels of insurance cover please contact the Legal Services Insurance Team.<sup>36</sup>
- 45.3 The Head Teacher shall ensure that a risk assessment is carried out in respect of various categories of activity and supplier and shall include factors such as desirability, or necessity, of the activity and other relevant corporate and School risk factors. The risk assessment shall be made available to the WSCC Director of Law, Assurance and Strategy upon request at any time. The insurances and levels of cover required by the School must be set out in any request for quote or invitation to tender or otherwise agreed at the start of the tender process so that the School's requirements are unambiguous to a potential tenderer.

## 46. PREVENTION OF BRIBERY AND EXCLUSION GROUNDS ARISING DURING THE TERM OF THE CONTRACT

- 46.1 Every contract shall include provision for termination if the supplier/contractor, their employees or anyone acting on the supplier's behalf:
- 46.1.1 corruptly offers, gives or agrees to give anyone an inducement or reward in respect of any contract with the School/Council;
- 46.1.2 commits an offence under the Bribery Act 2010; or
- 46.1.3 commits any of the offences listed in regulation 57(1) of the PCR 2015.

<sup>36</sup> Sharon Andrews – email: [sharon.andrews@westsussex.gov.uk](mailto:sharon.andrews@westsussex.gov.uk) and Tel: 03302 222723

## **47. TERMINATION FOR BREACH OF REGULATION 73**

- 47.1 For contracts at or above the relevant EU Threshold, the contract shall provide that the School shall have the right to terminate the contract if any of the provisions of regulation 73(1) of the PCR 2015 apply. These are where:
- 47.1.1 the contract has been subject to a substantial modification which required a new procurement procedure to be started;
  - 47.1.2 at the time of contract award, one of the mandatory exclusion criteria in regulation 57 applied and the supplier should therefore have been excluded from the procurement procedure; or
  - 47.1.3 the ECJ or any competent court has held that the contract should not have been awarded to the contractor in view of a serious infringement of the obligations under the EC Treaty and the PCR 2015.

## **48. PREVENT**

- 48.1 The contract shall make appropriate provision for information sharing between the supplier and the School, and/or such other measures as are appropriate, such as staff training, to support the School in meeting its duty under section 26 of the Counter-Terrorism and Security Act 2015 to have due regard to the need to prevent people from being drawn into terrorism (see the Council's Prevent Policy)<sup>37</sup>.

## **49. PAYMENT TERMS**

- 49.1 Every contract should provide that the School shall pay its supplier 30 days from receipt of an undisputed and valid invoice, submitted to the School following delivery/receipt of the goods/services/works.
- 49.2 The contract should also provide that the supplier shall pay their sub-contractors within a maximum of 30 days of receipt of an undisputed and valid invoice.
- 49.3 The Head Teacher must, prior to commencing the procurement exercise, obtain the agreement of the WSCC Head of Procurement and Contract Services and the WSCC Director of Finance, Performance and Procurement for any deviation from the 30 day standard payment terms set out in Standing Order 49.1, such agreement to be recorded in writing as a Payment Exception.

## **50. EXECUTION OF THE CONTRACT**

- 50.1 All contracts shall be signed but not sealed unless they must be signed under seal in accordance with this Standing Order 50.
- 50.2 The following contracts shall be signed under seal:
- 50.2.1 certain contracts involving land transactions; and
  - 50.2.2 contracts with a value of £250,000 or more.
- 50.3 The Head Teacher or the Chair of the Governing Body of the School shall be permitted to sign contracts valued at less than £100,000 on behalf of the School unless the nature of the contract is such that on the advice of the WSCC Director of Law, Assurance and Strategy the contract is to be signed under seal. If the contract has a value between £100,000 and £250,000 Legal Services shall determine how the contract is to be executed.
- 50.4 The WSCC's Director of Law, Assurance and Strategy shall execute all contracts which are required to be executed by the School as a deed under seal and may execute all simple contracts not required to be sealed.
- 50.5 The Head Teacher shall be responsible for ensuring all School contracts are correctly executed by the parties to the contract<sup>38</sup>. This shall include:
- (a) ensuring the same legal entity that quoted/tendered and was awarded the contract also signs the contract; and
  - (b) only the Head Teacher or the Chair of the Governing Body signs the contract on behalf of the School unless it is to be executed as deed under seal.

<sup>37</sup> <https://www.westsussex.gov.uk/fire-emergencies-and-crime/preventing-extremism-and-radicalisation/>

<sup>38</sup> If a School requires advice on how suppliers can validly sign a contract please contact the WSCC Commercial Legal Team.

## **51. CERTIFICATION OF THE CONTRACT**

- 51.1 The WSCC Director of Law, Assurance and Strategy shall be responsible for determining whether any contract should be certified under the Local Government (Contracts) Act 1997. This Act empowers local authorities to agree terms that will survive the main contract being set aside in the event of a finding that the School has exceeded its statutory powers in entering into the contract. In these circumstances, the certification process ensures that the private sector party is compensated. All such certificates shall be in a form approved by and executed by the WSCC Director of Law, Assurance and Strategy.
- 51.2 In the event a Contractor requires the School to provide such certificate advice must be sought from WSCC Legal Services as soon as the issue arises and well in advance of the date on which the certificate needs to be given.

## **52. CONTRACT AND SUPPLIER RELATIONSHIP MANAGEMENT**

- 52.1 The Head Teacher shall ensure that there are in place arrangements that will monitor and actively address any concerns with:
- 52.1.1 the performance of the contract against the specification and any key performance indicators or other performance monitoring regime;
  - 52.1.2 compliance with the contract terms and conditions;
  - 52.1.3 costs and Value for Money; and
  - 52.1.4 service user or end user satisfaction.
- 52.2 Where a contract is to be extended or re-tendered, the Head Teacher shall ensure that a report on the performance of the contract is prepared to inform any decision regarding the extension or re-tendering.
- 52.3 Head Teachers should review all contracts a minimum of six (6) months before they are due to expire and consider, whether the contract is to be extended (subject to the contract containing a provision that allows extension and obtaining approval), if the Schools wishes to carry out a new procurement exercise for the same or similar services/supplies and if there may be any TUPE implications in relation to a new contract.
- 52.4 The Governing Body shall ensure Head Teachers comply with guidance issued by the Council from time to time on effective contract and supplier relationship management.

## **SECTION 9 - VARYING AND EXTENDING CONTRACTS**

### **53. VARIATIONS PERMITTED BY LAW**

- 53.1 Contracts which are subject to the PCR 2015 shall not be varied other than in accordance with the provisions of the PCR 2015. The Head Teacher shall request advice from WSCC Legal Services (Commercial Legal Team) in relation to any variation which is subject to the PCR 2015.
- 53.2 All other proposals to vary contracts not subject to the PCR 2015 shall be considered by the Head Teacher on a case by case basis in accordance with the terms of the contract and the obligation to ensure Value for Money.
- 53.3 WSCC Legal Services (Commercial Legal Team) shall, upon request, advise any School officer as to whether a particular variation is subject to the PCR 2015.
- 53.4 Subject to Standing Orders 53.1 to 53.3 above, all contract variations (to include any extension that may be permitted by the contract) must be approved in accordance with Standing Order 3 (Authority to Contract).

### **54. EXTENSIONS AND RENEWALS**

- 54.1 Contracts subject to the PCR 2015 can only be extended where expressly provided for in their terms, or as otherwise permitted by the PCR 2015.<sup>39</sup>
- 54.2 Contracts with a value below the relevant EU threshold can be extended only where expressly provided for in their terms.

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<sup>39</sup> Please contact the WSCC Commercial Legal Team if you would like a template extension letter.

- 54.3 All contract extensions or renewals must be approved as follows:
- 54.3.1 if the value of the extension is less than £100,000, by the Head Teacher in consultation with the Chair of the Governing Body or Chair of the Schools Finance Committee, providing the total value of the contract, including all possible extensions, was originally approved by the Governing Body; or
  - 54.3.2 if the value of the extension is £100,000 or more, by the Chair of the Governing Body in consultation with the Chair of the Schools Finance Committee (or equivalent) providing the total value of the contract, including all possible extensions, was originally approved by the Governing Body
- 54.4 To extend an existing contract a Head Teacher must be able to demonstrate:
- 54.4.1 the scope of the services, supplies/goods or works provided under the contract is not being substantially altered;
  - 54.4.2 the original advertisement (and OJEU if within the scope of PCR 2015) stated that the contract could be extended as now proposed;
  - 54.4.3 that the Governing Body approval for the original contract stated that the extension(s) would be permissible;
  - 54.4.4 the original contract contained provision for the continuation of the contract beyond an initial period and the proposed extension is not exceeding the extension period allowed for in the contract; and
  - 54.4.5 the proposed extension represents value for money;
  - 54.4.6 the terms and conditions upon which the contract is extended (except price) remain substantially the same as the original contract that was advertised and entered into.
- 54.5 The Head Teacher is required to keep written records (to be kept on the School's file for the contract and available to the Council upon request) that the requirements of Standing Order 54.4 are satisfied, that the supplier's performance prior to the commencement of the extension has been satisfactory and reasons why it is preferable for the services, supplies or works to be provided by that existing supplier.
- 54.6 In determining how a contract extension or renewal shall be approved in accordance with Standing Order 54.3, the Head Teacher shall not disaggregate or otherwise sub-divide any known spend during the period of any such extension or renewal with a view to avoiding obtaining the approvals referred to in Standing Order 54.3.2.
- 54.7 Where the contract does not contain any option to extend the contract beyond an initial or fixed period, or all extension options have already been exercised and the Head Teacher wishes to extend the contract further, this will be considered a variation to the contract (the extension period being considered akin to a new single tender contract) and will require the Head Teacher to obtain authority for the variation and extension in accordance with Standing Order 3 or to procure a new contract in accordance with these Standing Orders. The remaining provisions of these Standing Orders will continue to apply in respect of any variation to extend, including but not limited to, Standing Orders 53 and 54.

## **SECTION 10 – DISCLOSURE, TRANSPARENCY AND RECORD KEEPING**

### **55. ELECTRONIC AVAILABILITY OF DOCUMENTS**

- 55.1 The Head Teacher shall ensure that all Procurement Documents for contracts that are at or above the EU thresholds are available online free of charge without restriction from the time the OJEU Notice is published (or an ITCI is sent when a PIN is used as a call for competition).

## **56. DUTY OF CONFIDENTIALITY OWED TO SUPPLIERS**

56.1 The Head Teacher shall not disclose information which has been forwarded by a supplier and designated by that supplier as confidential or commercially sensitive, including technical or trade secrets and the confidential aspects of tenders, without express authorisation from the WSCC Director of Law, Assurance and Strategy who shall balance the duty of confidentiality owed to suppliers against the School's obligations under FOIA and any other disclosure obligations. The Procurement Documents should inform interested parties of the Schools's duties of disclosure and invite tenderers to designate information as confidential or commercially sensitive. However, the School cannot guarantee that all information so designated will be withheld.

## **57. PUBLICATION OF CONTRACT AWARD NOTICES IN THE OFFICIAL JOURNAL**

57.1 The Head Teacher shall ensure that a Contract Award Notice is published on OJEU for all procurements subject to the PCR 2015 in accordance with those regulations.

## **58. DEBRIEFING TENDERERS**

58.1 For contracts valued at or above the EU Threshold, the Head Teacher shall ensure that all Candidates and Tenderers are offered debrief information during the procurement process, in accordance with regulation 55 of the PCR 2015, and at contract award, in accordance with regulation 86 of those regulations. The form of such debrief information shall be agreed with WSCC Procurement and Contracts Services in advance of disclosure to any Candidate or Tenderer.

58.2 In the event any request for additional feedback or debrief is received by the School the Head Teacher the Head Teacher must in the first instance consult WSCC Procurement and Contracts Services.

## **59. PROCUREMENT REPORT**

59.1 The Head Teacher shall keep a copy of all Procurement Documents in accordance with the Council's records retention policy.

59.2 The Head Teacher shall prepare a written report in relation to each procurement with a value at or above the relevant EU threshold containing the following information (unless such information is contained in the Contract Award Notice):

59.2.1 the subject-matter and value of the contract, Framework Agreement or dynamic purchasing system;

59.2.2 where applicable, the results of the qualitative selection and reduction of numbers under regulations 65 and 66, namely:

- (a) the names of the selected Candidates or Tenderers and the reasons for their selection;
- (b) the names of the rejected Candidates or Tenderers and the reasons for their rejection;
- (c) the reasons for the rejection of tenders found to be abnormally low;
- (d) the name of the successful tenderer and the reasons why its tender was selected and, where known the share (if any) of the contract or Framework Agreement which the successful tenderer intends to subcontract to third parties, and the names of the main contractor's subcontractors (if any);
- (e) for competitive procedures with negotiation and competitive dialogues, the circumstances as laid down in regulation 26 which justify the use of those procedures;
- (f) for negotiated procedures without prior publication, the circumstances referred to in regulation 32 which justify the use of this procedure;
- (g) where applicable, the reasons why the contracting authority has decided not to award a contract or Framework Agreement or to establish a dynamic purchasing system;
- (h) where applicable, the reasons why means of communication other than electronic means have been used for the submission of tenders; and

(i) where applicable, conflicts of interests detected and subsequent measures taken.

- 59.3 The Head Teacher shall maintain a Procurement File containing sufficient information to justify decisions taken at all stages of the procurement such as documentation on:
- 59.3.1 communications with suppliers and internal deliberations;
  - 59.3.2 preparation of the procurement documents;
  - 59.3.3 dialogue or negotiations, if any; and
  - 59.3.4 selection and award of the contract.
- 59.4 The Procurement File shall be kept for a period of at least three years from the date of award of the contract.
- 59.5 The Head Teacher shall prepare a report containing such information as the Cabinet Office may request in respect of procurements at or above the relevant EU threshold.

## **SECTION 11 – WAIVER TO SCHOOLS STANDING ORDERS ON PROCUREMENT & CONTRACTS**

### **60. AUTHORITY TO WAIVE STANDING ORDERS**

- 60.1 The Council’s Director of Law, Assurance and Strategy and Director of Finance, Performance and Procurement shall, jointly, be responsible for determining any requests to waive these Schools Standing Orders.
- 60.2 Any request to waive Schools Standing Orders shall be set out in writing using the Council’s standard waiver request form, found [here](#)) with clear reasons why the waiver is necessary, proportionate and represents Value for Money. The Head Teacher shall ensure that any such waiver request is submitted to the WSCC Director of Law, Assurance and Strategy and Director of Finance, Performance and Procurement in advance and allowing sufficient time for the request to be considered.
- 60.3 No waiver of Standing Orders can be made if it would contravene the PCR 2015 or any other applicable legislation.
- 60.4 No waiver can be granted retrospectively.
- 60.5 All waivers to these Schools Standing Orders in relation to contracts that have a value of £100,000 or more must be reported in writing to WSCC Procurement and Contract Services for logging in the register maintained for this purpose and available on the Procurement Services SharePoint site. Waivers in relation to contracts that are valued at less than £100,000 shall be recorded on the School’s Procurement File.

## ANNEX A – DEFINITIONS

Bond/Performance Bond	means an agreement under seal whereby a third party (usually, but not necessarily, a bank) guarantees to the School the fulfilment by the contractor of the contract.
Candidate	An economic operator that has sought an invitation or has been invited to take part in a restricted procedure, a competitive procedure with negotiation, a negotiated procedure without prior publication, a competitive dialogue or an innovation partnership.
Consortium	Two or more schools acting jointly for the purpose of the purchase of goods/supplies, services or works or two or more local authorities or contracting authorities acting jointly for the purpose of the purchase of goods/supplies, services or works and allowing schools to access their purchase arrangements.
Consultant	An individual or company commissioned to do a short term, and clearly defined piece of specialised work, with clear outcomes where the work is project based, outside business as usual and there is a defined end point for the Consultant's involvement.
Contract Award Notice	A notice containing the information set out in regulation 86 of the PCR 2015, for above EU Threshold contracts, and regulation 112 for below EU Threshold contracts.
Contract Notice	A notice advertising a public contract on OJEU.
Contracting Authority	As defined in the Public Contracts Regulations 2015.
Contracts Finder	A Government website on which all public contracts over a minimum threshold must be advertised.
Governing Body	the group of officials who draw up the rules that govern the actions, conduct and constitution of the school, the purpose of which is to 'conduct the school with a view to promoting high standards of educational achievement at the school' and who ensure that these rules are followed.
Framework Agreement	An agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded in a given period, in particular with regard to price and, where appropriate, the quality envisaged (regulation 33(2), PCR 2015).
FOIA	The Freedom of Information Act 2000.
Head Teacher	means an officer identified as Head teacher in the Scheme of Delegation who has been charged by the Governing Body to conduct a procurement process, or to participate in or lead a team of officers assembled for that purpose or dealing with a variation to a contract as the context requires.  For the avoidance of doubt, a Head teacher may delegate the exercise of his/her powers and duties under these Standing Orders. Any such delegation must be approved by the Governing Body in accordance with the Scheme of Delegation.
ITCI	Invitation to confirm interest.
Key Decision	An executive decision, which is likely: <ul style="list-style-type: none"> <li>• to result in the Council incurring expenditure which is greater than £500,000 or which is otherwise significant having regard to the Council's budget for the service or function to which the decision relates; or</li> <li>• to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in West Sussex.</li> </ul>
Liquidated damages	Also known as "liquidated and ascertained damages" and means sums which are payable by the contractor to the School on default or breach of contract. It must be a genuine pre-estimate of the losses which will be incurred by the School as a result of the contractor's default, or breach. It must not constitute a penalty.
OJEU	Official Journal of the European Union, where all public contracts which exceed the EU Thresholds must be advertised.
Parent company guarantee	means an agreement by one company, being the owner or substantially the owner of the contractor company, guaranteeing the fulfilment by that contractor of the contract.

PCR 2015	Means the Public Contract Regulations 2015 as amended and in force from time to time.
PQQ	Means a pre-qualification questionnaire.
Procurement Documents	Any document produced or referred to by the School to describe or determine elements of the procurement or the procedure, including the: <ul style="list-style-type: none"> <li>• Contract Notice (or PIN where it has been used as a call for competition)</li> <li>• Technical specifications</li> <li>• Descriptive document</li> <li>• Proposed conditions of contract</li> <li>• Formats for the presentation of documents by candidates and tenderers</li> <li>• Information on generally applicable obligations</li> <li>• Any additional documents (for example performance bond document, admission agreement)</li> </ul>
Procurement File	The record of each procurement that the School must maintain in accordance with regulation 84(7)-(9) of the PCR 2015.
Procurement Report	The report that the School is obliged to maintain in respect of each procurement of a contract valued at or above the relevant EU Threshold under regulation 84(1) of the PCR 2015.
Scheme of Delegation	The School Governing Body's formal written scheme of delegation in force and as amended from time to time.
SQ	Selection Questionnaire.
Supplies	means the provision of goods and/or materials (including gas and electricity) whether bought outright, leased, hired, or paid for by instalments.
Value for Money	The optimal use of resources to achieve the intended outcomes taking into account: <ol style="list-style-type: none"> <li>(a) Economy: minimising the cost of resources used or required (inputs), i.e. spending less;</li> <li>(b) Efficiency: the relationship between the output from goods or services and the resources to produce them, i.e. spending well; and</li> <li>(c) Effectiveness: the relationship between the intended and actual results of public spending (outcomes), i.e. spending wisely.</li> </ol>
Works contract	Means a contract for building, construction, civil engineering works and related activities including, but not limited to, the following examples: <ul style="list-style-type: none"> <li>• Site preparation - demolition and wrecking of buildings, earth moving, clearing of building sites, erection of scaffolding</li> <li>• Test drilling and boring</li> <li>• Building of complete constructions or parts thereof, including highways and sports facilities</li> <li>• Building installation - including electrical wiring and fixtures and fittings, heating systems, fire and burglar alarms, lifts, plumbing, insulation,</li> <li>• Building completion - plastering, joinery, windows and door installation, painting and decorating.</li> </ul>
WSSC Commercial Legal Team	<a href="http://schools.westsussex.gov.uk/Services/3668">http://schools.westsussex.gov.uk/Services/3668</a> Email - <a href="mailto:contractsandprocurement.legal@westsussex.gov.uk">contractsandprocurement.legal@westsussex.gov.uk</a>
WSSC Procurement and Contracts Services	<a href="http://schools.westsussex.gov.uk/Services/3602">http://schools.westsussex.gov.uk/Services/3602</a> Email - <a href="mailto:procurement@westsussex.gov.uk">procurement@westsussex.gov.uk</a>

**ANNEX B – SUMMARY OF SSOPC TENDERING REQUIREMENTS**  
**SUMMARY OF WSCC SCHOOLS STANDING ORDERS ON PROCUREMENT & CONTRACTS**

Aggregate value of the Contract	Procurement process	Who approves procurement process?	Who leads procurement process?	Advertising	How many quotes are required?	What type of contract is required?
£0- £5,000	<ul style="list-style-type: none"> <li>Email/write to supplier; or</li> <li>Place order under a Framework Agreement/Dynamic Purchasing System (“DPS”) that is available to the School</li> </ul>	Governing Body or Head Teacher with delegated authority.	Head Teacher or other School employee with delegated authority.	Not mandatory.	Minimum of one (1) written quote.	WSCC’s or supplier’s standard terms and conditions.
£5,000-£100,000	<ul style="list-style-type: none"> <li>Existing WSCC Contract that is available for Schools to access; or</li> <li>Send Service Providers (min 3) request for quotation; or</li> <li>Issue invitation to tender; or</li> <li>Call-off from Framework Agreement/DPS available to School.</li> </ul>	Governing Body or Head Teacher with delegated authority.	Head Teacher or other School employee with delegated authority.	Not mandatory but Best Value to be obtained.	Minimum of three (3) written quotes or as per rules set out existing WSCC contract, Framework Agreement or DPS	Existing WSCC contract terms or call off terms of Framework Agreement/DPS or standard template contract provided by WSCC or industry standard form of contract or bespoke contract prepared by Head Teacher that meets Standing Order requirements.
£100,000- EU Threshold	<p>Must be fair and transparent process representing Best Value:</p> <ul style="list-style-type: none"> <li>Existing WSCC Contract that is available for Schools to access; or</li> <li>Competitive tender; or</li> <li>Call off from Framework Agreement/DPS available to the School (seek advice from WSCC Procurement Services);</li> </ul>	Governing Body or Head Teacher with delegated authority, subject to approval from WSCC Legal Services.	WSCC Procurement and Contract Services.	WSCC website, trade press or website, and, if appropriate non-mandatory OJEU notice and/or advert on Contracts Finder.	As per rules set out in existing WSCC contract or Framework Agreement/DPS or ITT for competitive tender through WSCC e-sourcing portal.	WSCC standard terms, suitability to be confirmed by Legal Services, or tailored contract to be drafted by WSCC Legal Services.
At EU threshold or above	<ul style="list-style-type: none"> <li>Existing WSCC Contract that is available for Schools to access; or</li> <li>Procurement process compliant with PCR 2015; or</li> <li>Call off from Framework Agreement/DPS available to the School.</li> </ul>	Governing Body or Head Teacher with delegated authority, subject to approval from WSCC Legal Services.	WSCC Procurement and Contract Services	OJEU contract notice and Contracts Finder.	As per rules set out in existing contract or Framework/DPS or ITT in compliance with PCR 2015 through e-sourcing portal.	WSCC standard terms, as tailored by WSCC Legal Services.
At EU threshold or above (Schedule 3 Services “light touch”)	<ul style="list-style-type: none"> <li>Existing WSCC Contract that is available for Schools to access; or</li> <li>Procurement process compliant with PCR 2015 (Reg. 76); or</li> <li>Call off from Framework Agreement/DPS available to the School.</li> </ul>	Governing Body or Head Teacher with delegated authority, subject to approval from WSCC Legal Services.	WSCC Procurement and Contract Services	OJEU contract notice and Contracts Finder.	As per rules set out in existing contract or Framework/DPS or ITT in compliance with PCR 2015 through e-sourcing portal.	WSCC standard terms, as tailored by WSCC Legal Services
Key Decisions: £500,000+ or significant effect on community in 2 or more wards	Same as for above EU threshold contracts.	Cabinet Member or Officer (depending of type of key decision and SoD). Subject to prior approval from WSCC Legal Services.	WSCC Procurement and Contract Services	As for above EU Threshold contracts.	As for above EU Threshold contracts.	WSCC standard terms, as tailored by WSCC Legal Services or specific contract provided by WSCC Legal Services

Notes:

- The EU Thresholds from 01.01.18– 31.12.19 are: Supplies - £181,302, Services - £181,302, “Light touch Services” - £615,278 and Works -- £4,551,413. The value of the contract is the total value over the whole period of the contract, including any possible extensions.
- Where the Public Contracts Regulations 2015 (“PCR 2015”) apply, they apply in addition to the SSOPC and override the SSOPC where there is any conflict.
- Before issuing any request for quotation or invitation to tender, the specification and contract terms and conditions must be completed and provided to all potential suppliers at the same time as the request for quote/ITT is issued.
- This summary guide does not replace the Schools Standing Orders on Procurement and Contracts at <http://schools.westsussex.gov.uk/Page/1306>.