

**ANNEX to Section E of Schools Finance Manual Procurement Standing Orders for SCHOOLS (REVISED DEC 2019)**

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These Procurement Standing Orders should be read alongside section E of the Finance Manual and section 2.10 of the Surrey Scheme for Financing Schools.

Schools should comply with these revised Procurement Standing Orders for all purchases after **1 January 2020** although they should seek to implement them earlier where possible.

## 1 Status and Scope of Procurement Standing Orders for Schools

- 1.1 S2.10 of the Surrey Scheme for Financing Schools requires schools maintained by Surrey County Council to abide by the Council's Purchasing Rules and Guidelines and Standing Orders, except where doing so would remove freedoms specifically guaranteed to schools by legislation (e.g. the right to a free choice of suppliers). All authorities are required to maintain Procurement Standing Orders, as part of their Constitution under s135 of the Local Government Act 1972. These separate Procurement Standing Orders (PSOs) for schools are issued, under s2.10 of the Surrey Scheme. Schools must comply with them for any orders placed after 1 January 2020 but it is recommended that they apply them as soon as possible.

These Procurement Standing Orders for Schools have four main purposes:

- To secure **value for money** in the way we spend money, through appropriate competition between potential suppliers,
  - To ensure that public money is spent legally and fairly and that, where applicable, schools comply with the requirements of European Union (EU) legislation, and to **protect** individuals from undue criticism or allegation of wrongdoing,
  - To ensure transparent, consistent and fair ways of working, which command **public confidence**
  - To support sustainability and **social value objectives**, and encourage local businesses in Surrey.
- 1.2 These Procurement Standing Orders apply to all procurement by schools, including agency staff; community focused extended school activities and the activities of extended schools confederations, 14-19 networks and other partnerships of schools, irrespective of the source of funding. However, additional conditions may sometimes apply when schools are spending certain earmarked funds. For the avoidance of doubt, the PSOs do not apply to spending by the governing bodies of Voluntary Aided (VA) schools, on goods and services which are the responsibility of the governing body and not of the authority, unless the costs are met from funds provided from the delegated budget or otherwise by the authority. However, governors of VA schools should have regard to similar principles when spending funds originating from public sources.
- 1.3 Where a school chooses to use a consultant or broker to run a procurement process on its behalf, it is up to the school to ensure that its contract with the consultant or broker requires that body to comply with these Orders.
- 1.3 From time to time it will be necessary to update these PSOs because of changes in legislation. Where this is necessary, the Director of Procurement will issue a bulletin to schools, explaining the action necessary to comply with any such changes in the law. The instructions in such a bulletin will be deemed to be part of the PSOs. The changes will be formally incorporated into the PSOs as soon as possible thereafter. Schools will also be notified by bulletin of any other changes to the PSOs.

## 2 Choice of supplier

- 21 Schools may use a wide variety of methods to help choose suppliers, as long as the rules regarding spend are followed. This may include,:
- suppliers recommended by colleagues in other schools;
  - The use of nationally available framework agreements or website portals e.g. Crown Commercial Service.

Schools may wish to advertise opportunities for property/construction contracts on the Supply to Surrey website. See [the Supply to Surrey portal](#), where contact details are available for further help with this.

Schools are encouraged to develop collaborative arrangements for purchasing, for example through local confederations, in order to achieve better prices and greater efficiency.

- 22 Where a school uses a supplier, the school will be the customer (not the council). Schools will need to negotiate price, ordering, delivery and invoicing arrangements with the supplier, and to monitor the delivery of goods and/or services. Schools' requirements may differ from those of the council and thus the supplier's terms may also differ from those offered to the council. Most Surrey County Council contracts do not automatically cover schools.

- 23 Where the council arranges group contracts, specifically for the use of Surrey schools (e.g. catering, cleaning, grounds maintenance), schools are entitled to rely on those contracts without seeking alternative quotations.

Otherwise, schools are advised not to rely automatically on a single source of supplier information. They should consider regularly the availability of alternative suppliers or sources of information.

- 24 Schools should ensure that a selected supplier meets the appropriate minimum criteria for their purpose and order value, for:
- technical and financial suitability (see Annex C),
  - insurance cover (see s6 below),
  - compliance with health and safety requirements (particularly in respect of building, grounds or other site related work or PE or workshop equipment);
  - Where applicable, Criminal Records/DBS clearance.

Schools should not assume that checks undertaken on a supplier by a third party, for that party's own purposes, are adequate for the purposes of the school, unless these have been undertaken by the council, specifically for the purpose of group contracts for Surrey schools. Schools should not assume that the inclusion of a supplier in any publication or trade directory is any guarantee of suitability.

However, checks undertaken by schools should be proportionate to the likely risk associated with the goods or services supplied.

- 25 Schools are specifically reminded of their responsibility under section 11.5 of the Surrey Scheme for Financing Schools to have due regard to duties placed on the Authority in relation to health and safety, and to the specific responsibilities delegated to schools in accordance with the council's policy on health and safety matters. Where a school selects a contractor which is not on the authority's recommended list (if any), the school should undertake an assessment of that contractor's health and safety competence, retain the assessment on file and submit that assessment to the authority if requested.
- 26 In particular, schools undertaking construction projects should be aware of their responsibilities under the Construction (Design and Management), or CDM, Regulations. If the project is a "notifiable" project<sup>1</sup> under those regulations, they must appoint a CDM co-ordinator. We recommend that schools use the guidance set out by the [Association for Project Safety](#). Guidance is also available from Property Services.
- 27 Guidance on assessing health and safety competence in other areas may be obtained from the strategic risk management team at County Hall. There may be a charge for such advice.
- 28 If a school wishes to buy in a service previously provided by school staff, and the service formed a large part of the duties of specific school staff, it is likely that the Transfer of Undertakings Protection of Employment (TUPE) regulations will apply to those staff. This means that the staff will be entitled to transfer to the contractor on their existing terms and conditions. The School will have further obligations to secure continued membership or access to the LGPS which will need to be reflected in the tender and contract documents. Schools should be wary of any attempt by a contractor to pass TUPE risk back to the school in the event that they subsequently lose the contract, or to leave the school responsible for future pension liabilities of transferred staff. Schools proposing such action are advised to seek legal advice. Similarly, if one contractor replaces another, staff of the existing contractor may be entitled to transfer to the new contractor on existing terms. Prospective contractors should be made aware that TUPE may apply in such circumstances.
- 29 The council's procurement service may be able to offer limited assistance in some circumstances. See section 10 for further details.

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<sup>1</sup>In broad terms, a project is notifiable if it has a duration exceeding 30 days or involves more than 500 person days of construction work. It could be new build, extension/adaptation or demolition.

Schools may find the following websites helpful sources of information (this list is not exhaustive)

[Crown Commercial Service, the central government purchasing service](#)

[Department for Education – Procurement for Schools](#) (and go down to “procurement for schools”)

NB Where advice on these sites conflicts with the PSOs then the PSOs prevail unless the law specifies otherwise.

### 3 Procedures for orders of different values

- 31 The procurement process required for goods, works and services depends on the total value of goods, works and services supplied under the order or contract throughout its entire term, NOT just the annual value. The current minimum requirements for schools are summarised below. These apply to all procurement by schools, whether capital or revenue, other than that from a Surrey County Council service or under a recognised Surrey County Council group contract which is explicitly for the use of schools.

<b><i>Value range</i></b>	<b><i>Minimum requirement</i></b>
Up to £9,999.99	One written quotation
£10,000-£49,999.99	Three written quotations
£50,000-and above but below regulatory threshold	Tendering
Above the regulatory threshold: £189,330 (Social and other specific services £663,540) (£4.733m works) - See Annex B	Public Procurement Regulations compliant tendering (but see note on works Annex B)

These are the minimum requirements. Governors are free to set lower limits for any of the categories above, whether for purchases of any type, or for specified ranges of purchases or indeed specific single purchases. For example, they might choose to set lower thresholds for seeking three quotations for ICT than for building works, or they may choose a lower threshold than £10,000 for seeking three quotations. Limits lower than those specified in the table might be appropriate, for example, in smaller schools. In setting their local limits, governors will need to balance the need to secure value for money against the additional administration time involved in widening the supplier search. It is recommended that governors monitor the total level of business done with individual suppliers where that is significant. For example they might ask for reports on the total business, and number of separate orders, placed with any supplier with which total orders during any one year exceeds £10,000. This will reduce the risk of high levels of business being done with individual suppliers without proper competition and scrutiny, even when individual orders are below the £10,000 threshold.

- 32 If, exceptionally, a contract includes a non-monetary contribution by the school, that contribution should be valued and that value included in the cost. This might occur, for example, if the school offers a contractor the use of existing equipment which has a resale value.
- 33 Schools must not artificially divide up orders or contracts to keep them within a lower value procurement category. Schools are encouraged to consider whether offering a number of smaller contracts will enable small or medium sized contractors to compete, and thus benefit the local economy. 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.

- 34 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
- 35 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 goods and services to be supplied, during the term of the contract, to all schools benefiting from the contract. The lead school should provide evidence to the other members of the consortium to demonstrate that the requirements of these PSOs have been met.
- 36 For all significant purchases schools should consider “whole life” costs, including likely useful life, running costs (where relevant), maintenance and eventual disposal costs.
- 37 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
- 38 The school’s own finance policy should clearly specify:
- which staff are authorised to select suppliers and to place orders;
  - maximum order values and category restrictions for individuals,
  - thresholds above which two members of staff should be involved in placing orders,
  - thresholds above which governors should be consulted

#### **Purchases under £9,999.99**

- 39 A minimum of one written quotation is required, e.g. pricing information from a reputable supplier’s catalogue or price list will be adequate in simple cases. However, it is good practice to consider more than one quotation.  
Normally orders should be in writing (or by fax or e mail).

#### **Purchases of value between £10,000 and £49,999.99**

- 310 Schools should seek a minimum of three written quotations. At least two members of staff should be involved in choosing the successful supplier and placing the order. Orders should be in writing (fax will suffice) and two staff authorised under the school finance policy should sign them. Where possible, at least one quote should be from a Surrey-based business. It is important that requests for quotations accurately describe the school’s needs. Evidence of quotations requested and received should be retained for audit purposes. Schools may find it useful to make use of some of the guidance on tendering (Annex A) when inviting and evaluating quotations, where appropriate, for example media for external advertising.

Governors are encouraged to monitor the process of obtaining quotations, for example to ensure that a suitable range of suppliers is invited to quote.

- 311 A decision not to accept the lowest quotation can only be made by the governing body. The reason for such a decision should be recorded. If price is not to be the

deciding factor then the evaluation criteria should be established before seeking quotations.

312 A decision not to seek three written quotations for purchases between £10,000-£49,999.99 can only be made by the Governing Body, or by a committee to which the governing body has specifically delegated that power. Such a decision should be exceptional, and should be taken only when the governing body (or committee) is satisfied that it has evidence that it is impossible to find three suppliers suitable to quote. For example:

- the goods and services are so specialist that there are simply insufficient suppliers available,
- several suppliers have been contacted and have confirmed in writing (including fax or email) that they do not wish to quote, or
- there are fewer than three suppliers within a reasonable area compliant with health and safety requirements

If the decision is taken by a committee, it should be reported to the governing body at its next meeting. The reasons and evidence for that decision should be minuted, and the evidence should be retained. The governors should recognise that the decision might have a reputational impact on the school. In case of doubt, governors are advised to seek external advice.

313 Exceptionally, cases of emergency may arise where there is an immediate risk to health and safety, or security, which is so pressing that three written quotations cannot be obtained. Schools should have a formal written procedure, approved by governors, for authorising and recording actions taken in such circumstances, e.g. by liaison between head teacher and Chair of Governors. Such action should be reported to the Governing Body at the first practicable opportunity.

### **Purchase valued at or above £50,000 and below the regulatory thresholds**

314 Schools must follow a full tender procedure. There are six principal stages to this, which are described in more detail in Annex A below:

- establish precise need and specification;
- determine evaluation criteria, including weightings of different criteria;
- advertise outline requirement to potential tenderers;
- issue request for tenders to interested suppliers; stating the evaluation criteria;
- receive tenders and evaluate them against the advised criteria;
- award contracts and notify suppliers of the outcome

315 Contracts for purchases above £50,000-should be in writing and should be signed by the head teacher and Chair of Governors (or, if previously agreed by the governing body, by the head teacher and Chair of Finance/Resources) and should be countersigned by the supplier. The school is advised to seek competent legal advice on the form of contract. The contract should incorporate the specification and other requirements set out in the Request for Tender. Legal Services can provide some contract support to schools which buy back legal support, but may need to restrict support to higher value and/or higher risk contracts.



- 3.16 There may be exceptional circumstances where it is not appropriate to seek tenders for orders over £50,000. This is only likely to arise where:
- there is a requirement for a specific product, for which there is only one supplier, or
  - an existing external contract is being used which has been specifically intended for use by schools or similar bodies for contracts of the proposed value, and this was made clear when the contract was tendered e.g. a Surrey contract or Government Procurement Service or similar.

A decision not to seek tenders for orders over £50,000, where a Surrey (or equivalent) group contract is not being used, can only be taken by the full governing body. The governing body should have clear evidence for such a decision and the reasons, and evidence, for such a decision should be minuted. Governors are strongly advised to seek external professional advice before deciding not to seek tenders for orders over £50,000.

- 3.17 Tendering procedures can be time consuming and therefore governing bodies are strongly advised to consider, at the start of each year, whether they anticipate making any purchase which requires formal tendering, and an appropriate procurement timetable and process. This is particularly important where EU procurement requirements apply, see below.

#### **Purchases over the regulatory thresholds**

- 3.18 Purchases valued at or above £189,330 ( or for Social and other specific services £663,540, or £4.733m for works) are subject to formal requirements under the Public Contracts Regulations<sup>2</sup> this includes advertising the contract on the [OJEU website](#). Regulatory requirements may change should the UK leave the EU, and further guidance will be issued at that time. Annex B provides further details of public tendering requirements.

- 3.19 Schools should be aware that a court can award damages or penalties against them if public procurement requirements are breached. If, exceptionally, any school considers that these requirements cannot be met, the school should seek advice from the council's statutory monitoring officer (the Director of Legal, Democratic and Cultural Services) as a matter of urgency and before taking any further action.

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<sup>2</sup> These values apply up to December 2019 They will be revised thereafter based on exchange rates at the time Schools should check the appropriate thresholds if not advised of revised thresholds by then.

- 320 Schools should note that specific timescales and deadlines apply to tendering under the Public Procurement Regulations and should ensure that suitable arrangements are in place to comply with these, for example in school holiday periods.

### ***Post tender clarifications and negotiation***

- 321 Post-tender clarifications are only acceptable where they are necessary to clarify technical aspects or provide missing or unclear sections of a proposal. If post tender clarifications are required, all bidders must be treated equally and no advantage to one provider should be given over another in the course of the communications. In particular, the leading bidder should not be allowed to change the service specification or price, unless the same opportunity is given to all other bidders. If changes to the original process are necessary, then all bidders must be asked to submit a final offer, with full details of their revised proposal. These offers should be evaluated in the same way, and using the same criteria, as the original tenders. Schools are specifically warned that they should NOT share details of one bid with another bidder, e.g. by asking one to beat the price quoted by another.
- 322 Where regulated tendering requirements apply, any post-tender negotiations, other than minor clarifications, may breach those requirements. In such circumstances, it may be necessary to rerun the original tendering processes on the new terms.
- 323 If a school believes that post tender negotiations are unavoidable because of the nature of the proposed contract, or because no tender received are capable of being accepted, legal advice should be sought as soon as possible.

### ***Contract extensions***

- 324 Schools should consider best value when extending contracts. Any contract extension should be for a specified period and the level of approval of the extension should be the same as that required for the original contract.
- 325 A contract subject to the Public Contract Regulations may only be amended if the original contract permits such a variation and if it is allowable under the Regulations. Any variation may not exceed 50% of the original advertised value of the contract.

### ***Building works***

- 326 Community and voluntary controlled schools are required under s2.14 of the Scheme for Financing Schools to seek the authority's consent to any works proposed to the premises. This requirement is necessary for health and safety reasons. Other schools are advised to seek the advice of the authority, or of the Diocese, as appropriate. S2.14 also requires governing bodies to consult the authority when proposing capital expenditure exceeding a specified limit. (Consult the current version of the Scheme for the current limit)

### Summary of requirements for purchases of differing values

<b>Aggregate value</b>	<b>How many quotes are required?</b>	<b>How should you approach the market?</b>	<b>Should the contract be formally advertised?</b>	<b>Who must approve the contract award?</b>	<b>Who signs the contract on school's behalf</b>
£0 to £9,999.99	One	Email / Call Supplier. Use a Surrey supplier if they offer best value.	At your discretion	As specified in school finance policy	As specified in school finance policy
£10,000 to £49,999.99	Minimum of Three	Email / Call Supplier. Use a Surrey supplier if they offer best value.	At your Discretion	As specified in school finance policy	As specified in school finance policy
£50,000 + and below regulatory threshold	Tender process)	Issue Request for Tender	Yes	Head- teacher and chair of Governors	Head- teacher and Chair of Governors
Above regulatory threshold	Tender process compliant with Public Contract Regulations	Issue Request for Tender	Yes in accordance with regulations	Head- teacher and Chair of Governors	Head- teacher and Chair of Governors

## 4 Conflicts of interest

- 4.1 It is important that all purchasing decisions are perceived to be free of any conflict of interest. A conflict of interest may arise where someone involved in the purchasing decision has a close connection with a potential supplier (or other party involved) which could influence the outcome of the buying process. For example:
- someone choosing to buy goods and services on behalf of a school, or involved in the process of choosing the supplier or negotiating terms of business, has an interest in one of the suppliers' businesses. This interest may be financial or relational and may include significant business done by the individual with that supplier in their own right;
  - One of the suppliers might have an interest in the school e.g. membership of the governing body or parent school association.

The school's finance policy should specify how such conflicts of interests should be managed, e.g. it might require any decision in which the head teacher has a conflict of interest to be referred to the governing body.

Both staff/governors and suppliers must declare all real and potential conflicts of interest and these should be recorded, in order to minimise the scope for challenge and reputational damage to individual or school. S2.9 of the Surrey Scheme for Financing Schools requires governing bodies to keep a register of their business interests and those of the head teacher. They should also consider whether relevant interests of other senior staff should be included, where those staff have purchasing responsibilities.

The fact that a supplier may be subject to a conflict of interest does not mean that that supplier should not be considered, so long as the conflict is declared, recorded, its potential impact assessed, and the risks appropriately managed. For example, staff with such a conflict of interests should not have access to ordering systems or to financial reports.

## 5 Sustainability and Social Value

- 5.1 The Social Value Act 2012 places an obligation on public bodies to consider if there can be any additional benefit to the economic, social and environmental well-being of the area linked to any service contract which they are letting which is over the regulatory threshold. Specifically, for all contracts over this threshold, when planning to let a contract or framework agreement, a school must consider at the pre-procurement/planning stage:
- (a) How what the school proposes to procure might improve the economic, social and environmental well-being of the relevant area, and
  - (b) How, in conducting the process of procurement, it might act with a view to securing that improvement, where relevant to the goods and services to be procured. In doing so, the school must consider the extent to which it is proportionate in all the circumstances to take those matters into account.

The school must consider whether to undertake any consultation as to the matters that fall to be considered.

The requirements can be set aside if it cannot be practicably followed for matters of urgency (that are not linked to undue delay by the school). Hence it is important to maintain a sense of proportion in applying these requirements

- . Surrey has chosen to apply this to contracts of £100,000 and above, and encourages schools to do the same
- . The Council has adopted a sustainability framework, which commits us to sustainable economic development in Surrey, minimises the impact on the environment and supports social cohesion. Schools are encouraged to have regard to these issues when procuring goods, works and services i.e.:
  - (i) Environmental Sustainability – aim to purchase goods, works and services so as to minimise, where practically possible, carbon footprint, to encourage a positive impact on the local environment, and to obtain the best value costs and benefits over the whole life of the goods including disposal;
  - (ii) Economic Sustainability – schools are encouraged to recognise the importance of supporting the local economy, and to purchase goods and services which enhance the local economy of Surrey. Schools are encouraged to make every effort to make contracts and tender opportunities available and accessible to Small and Medium Enterprises (SME) in the local community. However, this does not mean that schools should discriminate *in favour* of SMEs or local companies, and indeed such discrimination is illegal where contracts are subject to EU legislation;
  - (iii) Social sustainability: schools are encouraged to purchase goods, works and services in such a way as to promote community well being and to use suppliers who operate fair working practices;

- (iv) Equality and Diversity – suppliers should have an equality and diversity policy demonstrating their commitment to equality of employment and of service delivery. Schools should ensure that any tender process is free from discrimination or perceived discrimination, in accordance with the Council’s Equality Policy. However, schools cannot insist on any specific equalities terms in the contract, beyond ensuring equality of delivery to pupils, school staff and other users.

## 6 Insurance Liability

- 61 Schools should ensure that all suppliers comply with the following minimum insurance requirements:
- (1) Wherever a contractor provides direct advice and/or design services, including all consultancy arrangements, that contractor must have Professional Indemnity insurance cover of :
  - (2) £1million or higher for contracts of up to £499,999 total value
  - (3) £5 million or higher for all other contracts;
  - (4) All suppliers of works (and designated services) must have and maintain Public Liability insurance and Employer's Liability insurance of
  - (5) £5m or higher for contracts of up to £499,999
  - (6) £10 million or higher for all other contracts, in addition to any other insurance recommended by the Insurance Section. (Sole traders with no employees are not required to subscribe for Employer's Liability.)
- 62 Exceptionally, the Principal Insurance Officer may allow a reduced level of insurance cover where he is satisfied that the reduced level is adequate to cover the potential risks to the school and to the county council. Where the governing body is of the view that the normal insurance requirements are excessive for a specific contract, the school should discuss the issue with the Principal Insurance Officer, explaining the reasons for seeking approval of a reduced level of insurance

## 7 Leases

- 7.1 If proposing to enter into leases, schools should remember that many leases are defined as borrowing, and are thus outside their powers.
- 7.2 Schools are required to consult Children, Schools and Families Finance (David Green 020 8541 8010) before entering any leasing contracts, and to have regard to any advice given, where:
- \* The total value of the equipment obtained under the lease, or other leases with the same company, exceeds £10,000 and/or
  - \* The total payments under the lease exceed £10,000.

This is in addition to complying with the requirements of these PSOs as regards seeking multiple quotations and tendering. For tendering purposes, the cost of a lease is the total of all payments expected to be made under the lease. Schools must still satisfy themselves that a proposed lease offers value for money.

- 7.3 Schools should also carefully consider the whole life cost of a lease, and compare it with the cost of buying outright, and of buying any services separately, taking account of any discounts to which they might be entitled.
- 7.4 Schools are specifically warned that if cash back payments (however described) and settlement costs on returned equipment are included in a lease, such a lease is beyond their powers. Further advice on leases and related issues is included in Section E of the Schools Finance Manual.



## 8 Retention of records

- 81 Schools should ensure that all original signed contracts for goods, works and services valued at £50,000 or more are kept in a secure, fireproof location, and also that scanned electronic copies are held for all contracts entered into by the school in a centrally maintained area on the IT system so that it is easily accessed if necessary by the management team and is kept securely.

The retention of tenders and contractual documentation is prescribed in the Limitation Act 1980 and the Public Contracts Regulations 2015

- for all contracts over regulatory threshold value, a full record of all key decisions and process in relation to the procurement procedure will be kept and maintained..
- All signed contracts under £500,000 (including all tender documentation) must be retained for a minimum of six years following contract expiry.
- All signed contracts signed over £499,999 (including all tender documentation) must be retained for a minimum of twelve years following contract expiry.

## **9. Prevent Duty – the Counter-Terrorism and Security Act 2015**

9.1 The above Act came into force early in 2016, and there are provisions which impact on local authorities, and in particular, where contracts are concerned, places duties in relation to the providers and making sure they are aware of the legislation and support the local authorities in their duties. Some of the duties specified in the guidance for local authorities are as follows:

- Local authorities to take the opportunity when new contracts for the delivery of their services are being made to ensure that the principles of the duty are written in to those contracts in a suitable form.
- Local authorities are to ensure that organisations who work with the local authority are not engaged in any extremist activity or espouse extremist views.

The following wording should be inserted into all contracts for services entered into by Schools:

### **XX. Counter-Terrorism and Security Act 2015**

**XX.1 The Provider acknowledges that the Council has a duty under the Counter-Terrorism and Security Act 2015 (“CTSA”) to have due regard to the requirement to prevent people from being drawn into terrorism. The Provider shall facilitate the Council’s compliance with its duty pursuant to the CTSA and the Provider shall have regard to the statutory guidance issued under section 29 of the CTSA and in particular the Provider shall ensure that staff:-**

**XX.1.1 understand what radicalisation means and why people may be vulnerable to being drawn into terrorism;**

**XX.1.2 are aware of extremism and the relationship between extremism and terrorism;**

**XX.1.3 know what measures are available to prevent people from becoming drawn into terrorism and how to challenge the extreme ideology that can be associated with it;**

**XX.1.4 obtain support for people who may be exploited by radicalising influences.**

**XX.1.2 Where the Provider identifies or suspects that someone may be engaged in illegal terrorist related activity, the Provider must refer such person or activity to the police**

## **10 Support available from the local authority**

- 10.1 The authority no longer has staff in place specifically to support schools with procurement, but may be able to provide limited advice to individual schools, particularly in high risk cases. The authority may need to charge for this. It is still important that the authority is made aware of any emerging problems with suppliers which might affect a number of schools, so that appropriate general guidance can be given

## **Annex A Further information on the requirements of a tendering process**

### ***A1 Advertising the intention to tender***

A1.1 Schools should advertise their requirements using a method likely to generate interest among potential suppliers, e.g. in the local press or appropriate trade press. They **MUST** advertise on the national Find-a-Tender portal if the value of the tender exceeds the appropriate limit for regulated tendering. There are other websites which may be useful for advertising tenders e.g. the Government's Contracts Finder – contracts advertised here also appear on [www.supplytosurrey.co.uk](http://www.supplytosurrey.co.uk), which is a site where all public sector contracts across Surrey can be advertised. Schools should not rely solely on their own websites for advertising business opportunities.

The specification should not insist on any specific product or process being used where this is not essential, as this may reduce competition. Indeed such a restriction would be illegal where contracts are subject to Public Contract Regulations. But otherwise the specification should be as precise as possible, both to minimise future disputes and to reduce the need for suppliers to price in risk.

The content of the advertisement should be sufficient for potential bidders to establish whether it is worthwhile for them to express an interest. Bidders should be given at least 30-35 days (depending on which procedure is followed) from the date of appearance of the advert to express an interest in tendering

### ***A2 Qualification stage***

A2.1 All procurement procedures will use a qualification stage. This includes mandatory and discretionary exclusion grounds. A Pre- Qualification Questionnaire (PQQ) needs to be included in either the contract notice or invitation to confirm interest (depending on which procedure is followed). The Criteria should be linked to the contract and must be objective and non-discriminatory.

### ***A3 Invitation to Tender (ITT)***

A3.1 A formal Request for Tenders should be issued to all suppliers who have passed the qualification stage. This should be issued simultaneously and in writing. This should include at least

- Specification (this should include volumes and service standards/ performance indicators, It should concentrate on outputs, rather than method, where appropriate);
- expected completion date, or start and end dates if contract is for continuing supply;
- if the contract involves transfer of staff, whether or not TUPE applies (it probably will-see 2.6);
- schedules of goods/works/services to be priced, suppliers should be asked to price exclusive of VAT;
- the basis of any inflation (or other price) adjustments during the contract, if appropriate;
- Form of contract and procedure for negotiating changes to the contract, where applicable; including any circumstances in which the contract may be terminated early;
- tender evaluation criteria including models and scoring

\* Deadlines for receipt of tenders, and the form in which they should be submitted

- (e.g. whether electronic submission is acceptable);
- number and nature of references required, if any;
- Latest expected date for award of contract (i.e. date to which tender offer must be valid);
- Procedure for dispute resolution;
- A tender reference for use when submitting tenders

Bidders should be advised that the provisions of the Freedom of Information Act 2000 may apply to any information supplied by them. Certain confidential and commercially sensitive information can be withheld under the Act. Potential suppliers should be given the option to identify any information included in their tender, which they would not wish to be disclosed under FOIA, and to explain why it should not be disclosed.

Bidders should be required to confirm in writing that they have not colluded with any other bidder or potential bidder, or given or offered any inducement to anyone in respect of the tender.

Bidders should be asked to state in writing any relationship or connection which they may have with any school employee or governor or close relation, or any other issue which may be seen to lead to a conflict of interest between bidder and school.

Bidders should confirm in writing that they accept all of the proposed contract terms. Legal advice should be taken on any objections by any bidder to the terms of the contract, having regard to the need to treat all bidders equitably.

Schools may accept electronic submission of tenders, but if so:

- they are advised to set up a separate mailbox for the purpose, which will not be opened until the deadline date;
- They should specify the form in which electronic tenders should be submitted (e.g. Word, Excel or pdf).

#### **A4 Receipt and opening of tenders**

A4.1 Tenders should be returned to the school, clearly marked as tenders, with appropriate references as specified in the Invitation to Tender, and should not bear the identity of the bidder.

All tenders should be opened at the same time, after the deadline date, by at least two members of staff (including the head teacher, or another member of the Senior Leadership Team authorised by the governing body to undertake that role). A list should be kept of all tenders received, all documents enclosed with each tender, the date and time of receipt, date and time of opening, the member of staff opening them and the member of staff witnessing the opening. All tenders received in hard copy should be date stamped on arrival and again on opening.

All tenders received by the deadline should be reported to the Governing Body (or finance or resources committee if agreed locally). Faxed tenders are not acceptable.

The head teacher, or nominated substitute, may seek clarification of obvious

errors in a tender (e.g. arithmetical errors). Otherwise, no member of staff or governor should communicate with a bidder prior to the award of the tender. All such communications should be in writing or by email, other than in wholly exceptional circumstances, the reasons for which should be recorded.

Late tenders should not be considered, unless there is evidence that they were posted in sufficient time to meet the deadline, and that the late receipt has not benefited the bidder. Tenderers submitting late should be advised that their tender has not been considered because it was received late, and should be given no other feedback on their tender.

#### **A5 – Tender evaluation criteria**

A5.1 Award must be on a MEAT (most economically advantageous tender): this can be based on price or cost. The MEAT factors must be disclosed prior to tender and weighted and linked to the subject matter of the contract and may include 'social aspects'.

A5.2 The process of assessing and scoring tenders should involve both the head teacher and representatives of the governing body and the final decision should be approved by the governing body. The school should determine who is to be involved in this process, before issuing the Request for Tender.<sup>3</sup>

A5.3, Often tender evaluation will require technical expertise e.g. in building design, catering, cleaning, grounds maintenance or ICT matters. The school is responsible for ensuring that proper advice is taken from appropriately qualified sources, and for meeting any costs incurred. Sources of advice within Surrey County Council are shown at s2.5 above.

A5.4 If no compliant tenders are received, then the school should seriously consider whether the original tender document was specific enough, and whether to retender with revised documentation. If a contract is above the EU procurement threshold then retendering is likely to be mandatory. In such circumstances, the school should advise the tenderers why the tendering exercise is repeated, and why their tenders were non-compliant.

## **Annex B Summary of key features of the Public Contracts Regulations 2015**

The Public Contracts Regulations 2015 are designed to ensure that suppliers throughout the EU have an equal opportunity to tender for public contracts i.e. that there is no discrimination according to nationality. They apply to all public sector contracts above a specified threshold, which is updated bi-annually. Penalties and damages may be awarded by a court for breach of these regulations.

### ***Current Thresholds***

The regulatory thresholds from January 2020 to December 2021 are:

<b><i>Contract Type</i></b>	<b><i>Threshold Value</i></b>
Supplies and Services Contracts	£189,330
Light Touch Regime (Social Care, Health and Education contracts)	£663,540
Works Contracts	£4,733,252

*(Please note that these thresholds are updated every two years and the next update is due in January 2022. Should the UK leave the EU further guidance will be provided)*

### ***Advertising the tenders***

For all contracts subject to the Regulations, schools must advertise a Contract Notice on the national Contracts Finder Portal (or Official Journal of the EU until the UK leaves the EU) for a minimum timescale as set out in the Public Contracts Regulations.

Contract notices may also be placed elsewhere (e.g. in trade periodicals) but they may not precede the formal notice, nor must they contain any additional information not provided in the formal notice.

The Contract Notice must specify the tender procedure and the evaluation criteria. There is no need to advertise a contract on the portal if it is only for “works” and the value is less than £4.733m although tenders should still be publicly advertised. Again you should take competent legal advice as to whether a contract is for works only.

Schools must supply prospective tenderers with an Invitation to Tender within four days of application. Tenderers must be given at a minimum the timescales set out in the Public Contract Regulations to complete and return it.

### ***Procurement Procedures***

Within the regulations there is a choice of five tendering procedures, these are:

**Open Procedure** – also known as a one stage process, this just uses a full tender process with no pre-qualification stage.

**Restricted Procedure** – also known as two stage process, which has a pre-qualification section and then moves to a full tender process.

**Competitive Procedure with Negotiation** - is a method where the market is engaged directly in dialogue (usually with more than one supplier) in order to successfully engage a supplier. Timescales are variable because of the nature of the procedure.

**Competitive Dialogue Procedure** - this method is used usually where the requirement is very complex and cannot be clearly defined up front by the Council. The timescales are very variable but allows for several rounds of dialogue with potential suppliers.

**Innovation Partnership** – this process is reserved for use where the Council identifies the need for an innovative product, service or works not currently available that it requires a partner/s to develop/research. It follows the same process as the Competitive Procedure with Negotiation.

For all contracts, except those covered by the Light Touch Regime, one of these procedures must be selected.

The **Light Touch Regime** – covers Health, Education and Social Care Contracts the above threshold contracts (higher threshold of £663,540 must be advertised in OJEU and the process must be fair, open and transparent.

### ***Awarding contracts***

Schools must advise all tenderers of the outcome of the contract, and how the evaluation criteria were applied. Unsuccessful tenderers must be told that they have been unsuccessful, the score they achieved, the reason why their bid was not



successful, and the name and score of the successful tenderers. The debrief letters must also contain details of the relative advantages and characteristics of the winning bidder.

Schools must allow a “standstill period” of at least ten days after advising tenderers of the outcome of the award process, before signing or implementing the contract (fifteen days if the notification is sent by post). This standstill period is required in order to give unsuccessful bidders an opportunity to challenge the outcome. The date of issuing the notices is counted at day zero.

Contracting authorities shall send for a Contract Award Notice must be published following the results of the procurement procedure not later than 30 days following the decision to award or conclude it.

A contract involving a combination of suppliers services and/or works requirements, will be considered to follow the process where the greater part by value is made up that type of contract requirements.

### ***Works contracts***

Capital works contracts are only subject to the regulations if their value exceeds £4.733m. Schools may still use compliant procedures for works contracts of lower values if they choose. Schools should seek legal advice before classifying any contract as a works contract.

Broadly, works contracts include contracts for:

- \* Site preparation  
E.g. demolition and wrecking of buildings; earth moving, Clearing of building sites
- \* Test drilling and boring
- \* Building of complete constructions or parts thereof; including highways and sports facilities
- \* Building installation, including electrical wiring and fittings, heating systems, fire and burglar alarms, lifts etc, insulation, plumbing;
- \* Building completion, plastering, joinery, windows and door installation, painting and decorating etc.

## **Annex C Financial suitability**

Schools could face additional costs and/or disruption to service if a contractor ceases trading during the term of a contract. In order to reduce the risk of this, it is important to consider the financial soundness of potential contractors for contracts performed over a period or where otherwise the school would face significant risks if a supplier failed to fulfil its duties.

Financial appraisal of contractors normally involves obtaining and analysing copies of suppliers' accounts for the last three years and considering their profit/loss, borrowing levels and turnover in that period. For example, a contractor might be high risk if the school's work is a very high proportion of the contractor's turnover, or if the level of activity has increased rapidly over the last few years. It is accepted practice not to award a contract if its annual value exceeds 25% of a contractor's turnover, although this may be increased where a high proportion of the cost is labour costs. What is acceptable will depend on the industry concerned.

Where a financial appraisal indicates insufficient financial strength, the school may be advised to obtain a guarantee from the supplier's parent company (if any) or bank, although clearly this only offers protection against financial loss and does not guarantee continuity of service.

If schools wish to undertake a financial appraisal of bidders then bidders should be advised of this in the Request for Quotation or Invitation to Tender and should be advised of the information required...

The county council's financial reporting team is able to undertake financial appraisals of potential suppliers on request at a charge to the school of £30 per supplier assessed. Please contact **Barbara Howell (020 8541 9210)** or **Alison Darlow (020 8541 8511)** in the first instance before issuing the request for quotation/Invitation to Tender. FRT will advise of the information required from bidders, and of a suitable timescale for completion of the appraisals.