**STANDING ORDERS RELATING TO CONTRACTS**

9.1 These contract regulations cover all types of contracts including awarding contracts, placing orders, loan or leasing arrangements, employing outside consultants, where a party is supplying goods, works or services or disposing of assets (other than land) or spending grant income received from a third party. They must be followed for all contracts with outside organisations or people. These contract regulations cover any contract or purchase of goods and services by any employee regardless of how the expenditure is funded.

**9.2 What is a Contract?**

9.2.1 A contract is any agreement to provide goods, works or services in exchange for payment or in kind. Employees should avoid giving verbal commitments to suppliers as this can constitute a contract.

9.2.2 The terms and conditions to be applied to the contract provide clarity and protection to the participants, and the specification of the requirement should be clearly understood by both parties. Their length and complexity are likely to depend on the extent of cost and complexity of the goods or services to be supplied.

9.2.3 All employees engaged in the following activities, shall make every effort to ensure that the best value for money is achieved for the acquisition and delivery of:

* goods or materials;
* services and consultancy;
* building works;
* the supply of goods or services to third parties which provide an income.

Advice should be sought from JCPS and the Estates Department in relation to all building contracts as the thresholds will be higher than the contract levels detailed in the table.

9.2.4 Such efforts shall also continue throughout the lifetime of any contract to ensure that best value for money is maintained in the quality and standard of all goods, services and works supplied and in the review of proposals to change or vary any feature of any contract during its lifetime.

**9.3 Key Controls**

9.3.1 No contract or project shall be deliberately or artificially divided into a number of separate contracts in order to avoid the obligations set out in these Contract Regulations, or any legislation. This shall be without prejudice to the suitability to divide contracts into separate lots, where appropriate to do so, in accordance with applicable procurement legislation and guidance.

9.3.2 Wherever possible, sufficient competition shall be encouraged from potential providers to supply goods, services, building works, etc in order to demonstrate value for money and public benefit.

9.3.3 Every contract concluded shall comply with:

* any relevant Directives of the EU for the time being in force in the United Kingdom including any requirement for aggregation;
* any laws of the United Kingdom including any Act of Parliament requiring the letting of contracts by competitive tendering; and
* the requirements of any applicable codes of practice and any relevant government directives.

9.3.4 Subject to compliance with 9.3.3, exemption from any of the provisions of these Contract Regulations may only be made in exceptional circumstances as set out in these regulations.

9.3.5 The Police and Crime Commissioner shall be informed of exemptions made under 9.3.4 at the earliest opportunity where these relate to contracts of value Level 3 and above.

9.3.6 In addition to adhering to the above, any employee who is engaged in any activities or processes leading to the award of a contract or in its subsequent delivery shall:

* show no undue favour to or discriminate against any contractor or potential contractor;
* carry out their work in accordance with the highest standards of propriety and proper practice (including respecting the confidentiality of commercial information);
* not breach the requirements of the gift and hospitality policy;
* declare any links or personal interests that they may have with potential or existing suppliers and contractors and take no part in the selection or direct management of a supplier or contractor with which they are connected.

9.3.7 These Contract Regulations shall apply, irrespective of the source of funding for a contract.

**Responsibilities of all Managers**

9.3.8 To understand the contract procedures that relate to their level of delegation and that must be followed when negotiating and agreeing contracts and ordering works, goods and services, and to ensure that any designated Pillar Lead/ departmental representatives (‘Authorised Officers’) understand and follow such procedures. This shall include without limitation the responsibility to contact JCPS to ensure the publication of the relevant transparency notices e,g. in relation to preliminary market engagement, contract award, contract change, direct award and ‘below threshold’ tender notices.

9.3.9 To ensure that there are sufficient funds to cover the financial commitment being made.

**Responsibilities of the Police and Crime Commissioner**

9.3.10 To establish an agreed set of Contract Regulations.

9.3.11 To monitor contract outcomes and compliance with these Contract Regulations.

**Responsibilities of the Monitoring Officer**

9.3.12 To receive reports where the arrangements for agreeing or letting contracts have not met the requirements of these regulations.

9.3.13 To approve the terms of standard contracts and/or to ensure that the advice of the Joint Legal Service has been sought in relation to the same.

9.3.14 To approve all contracts where the Police and Crime Commissioner is the supplier.

9.3.15 To ensure that there is a record of all contracts over £10,000.

**Responsibilities of the PCCCFO**

9.3.16 To make sure that the Police and Crime Commissioner achieves value for money.

9.3.17 To make sure that all contracts are in line with Financial and contract Regulations.

9.3.18 To consult the Chief Executive and provide guidance on any relevant financial matter relevant to these financial and contract regulations.

9.3.19 To consult the Chief Executive and recommend action if arrangements for agreeing contracts have not met the requirements of these Financial and contract regulations.

**Responsibilities of the CCCFO and Chief Officers Team**

9.3.20 To follow Financial and Contract regulations and any codes of practice, guidance or instructions provided by the Chief Executive and the PCCCFO and relevant professional bodies.

9.3.21 To ensure that all officers and staff are informed of and comply with Financial and Contract regulations.

9.3.22 To obtain appropriate legal, financial and other advice.

9.3.23 To comply with all relevant laws.

9.3.24 To be satisfied that agreed budgetary provision exists to cover the financial ]commitment being made.

9.3.25 To ensure that the Force has systems in place to avoid fraud and corruption and breach of Financial and contract regulations.

9.3.26 To provide any information required by the Chief Executive, PCCCFO (or CCCFO) to ensure compliance with legal requirements.

9.3.27 To ensure that there is relevant approval for all contracts in line with the scheme of delegation.

**Responsibilities of the CCCFO**

9.3.29 To ensure the publication of transparency notices as may be required pursuant to the Procurement Act 2023

9.3.30 To ensure that there is a report at least quarterly with a list of all procurements of Level 4 Value and above due to be accepted in the coming quarter, with their estimated value.

**Responsibilities of the Head of the Joint Commercial and Procurement Service (JCPS) (Head of JCPS)**

9.3.31 To apply and monitor the use of these Financial and Contract regulations and any codes of practice, guidance or instructions provided by the Monitoring Officer, and the PCCCFO to all contracts.

9.3.32 To be responsible for procurement standards and practice.

9.3.33 To produce and action the annual “procurement plan” including the planning of medium to long term purchase requirements, and to produce a list of contracts awarded of Level 3 and above value(s) to the CCCFO and PCCCFO for the previous quarter.

9.3.34 To report any material breach (or potential material breach) of Financial and Contract regulations to the CCCFO or the Monitoring Officer or the PCCCFO.

9.3.35 To ensure that suppliers are required have in place sufficient insurance cover as appropriate.

9.3.36 To ensure that there is a record of all contracts over £10,000 entered into by the Police and Crime Commissioner, and to make arrangements for its publication in accordance with legislation.

9.3.37 To be responsible for publishing a list of payments over £30,000 (£25,000 plus VAT) and other mandatory reports in accordance with legislation.

9.3.38 To seek legal, financial and other appropriate advice in good time to ensure that the Force complies with legal requirements.

9.3.39 To ensure that there is a suitable procedure on how to best check the financial standing of suppliers.

**Responsibilities of staff with financial management responsibility**

9.3.40 To comply at all times with Financial and Contract Regulations and codes of practice, guidance or instructions provided by the CCCFO, Chief Executive, PCCCFO and JCPS.

9.3.41 Prior to the issue of any quotation request or invitation to tender in relation to Level 3 and above, to prepare with the assistance of JCPS a detailed description or technical specification of the required works, goods, services, and/or materials.

9.3.42 Retaining a record of the rationale for any contract award (including where there is a Direct Award) in order to demonstrate value for money for all transactions.

9.3.43 Informing the JCPS of the nature and estimated value of the contracts which may be required by the department in the next financial year.

**9.4 Power to Delegate**

9.4.43 The CCCFO may delegate their powers under these Contract Regulations to an authorised officer.

**9.5 Purchasing Procedures and Thresholds**

9.5.1 Where collaborative frameworks or contracts for the supply of goods, services or works exist which comply with 9.2 (Key Controls), these arrangements may be used in preference to conducting a separate quotation or tender process. Such arrangements will be identified by the JCPS with the agreement of stakeholders. Supplier selection shall then be in accordance with the terms of the framework or contract.

9.5.2 Where collaborative agreements are with single suppliers, the JCPS shall take such steps as may be necessary to assure themselves that the agreement represents value for money prior to making recommendation on the use of the arrangement.

9.5.3 Where no suitable collaborative arrangements exist for sourcing goods, works or services, the procedure to be followed shall be determined by reference to the estimated value of the purchase as set out below. Unless specified otherwise the value of the contract is the estimated whole life cost.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Threshold and Type/Level** | **Total Contract**  **Value (Excl. VAT)** | **Total Contract Value (incl. VAT)** | **Quotation/**  **Tender**  **Process** | **Responsible**  **for Procurement** | **Responsible for approving outcome and evaluation setting criteria** | **Responsible for accepting tenders** |
| 1 | Up to £25000 | Up to £30,000 | Place order with supplier best able to provide value for money. Value for money record of reasons for selection to be retained by Authorised Officer. This may include seeking at least 3 electronic quotations. The aggregate spend cannot exceed £25k (excluding VAT). A value for money record to be submitted with a written requisition in relation to all contracts exceeding £500 in value to be recorded on the relevant system e.g. ERP. | Authorised Officer | Authorised  officer/  budget holder | Head of  Department /  Pillar Leads |
| 2 | £25,001 and up to £500,000 (but below the procurement threshold for that public contract) | £30,001 and up to £600,000 (but below the procurement threshold for that public contract | Sourcing through available frameworks or by quotation or tender on procurement tendering portal or direct award. | JCPS | JCPS | CCCFO/  ACC (Organisation)/  Head of Finance  OR  PCCCFO (PCC)/  Chief Executive (as appropriate) |
| 3 | The relevant public contract procurement threshold | The relevant public contract procurement threshold | Follow public procurement legislation to source via available framework or via tender process or direct award | JCPS | CCCFO | CCCFO/  ACC (Organisation)/  Head of Finance  OR  PCCCFO (PCC)/  Chief Executive  (as appropriate) |
| 4. | Over Public Contracts Regulation Threshold (and **where this exceeds £500,000)** | Over Public Contracts Regulation Threshold (and **where this exceeds £600,000)** | Follow public procurement legislation to source via available framework or via tender process or direct award | JCPS (with support from JLS) | CCCFO/  PCCCFO | PCCCFO or  Chief Executive |

9.5.4 Prior to going out to tender the service lead must determine the outcomes desired from the contract and the evaluation criteria for the acceptance of a tender for that contract.

9.5.5 For transactions of Level 2 Value and above the JCPS team must be consulted in the development of the desired outcomes and evaluation criteria.

9.5.6 Acceptance procedures are set out below. Exemptions to this Regulation are detailed in 9.15 (Direct Award). The tender rules relating to procurements made under legislation will always apply.

9.5.7 Any preliminary market engagement in relation to Levels 3 and 4 must be undertaken in consultation and with the assistance of the JCPS. This will include any engagement with supplier (and others) before publishing a transparency notice for the purpose of—

(a)developing the transparency requirements and approach to the procurement;

(b)designing a procedure, conditions of participation or award criteria;

(c)preparing the transparency notice and associated tender documents;

(d)identifying suppliers that may be able to supply the goods, services or works required;

(e)identifying likely contractual terms;

(f)building capacity among suppliers in relation to the contract being awarded.

**9.6 Conditions of Participation**

9.6.1 In accordance with the principles of procurement legislation from time to time and where this is appropriate in consultation with the JCPS, the selection of organisations to be invited to tender under these Contract Regulations shall be based on a combination of technical capacity, quality and financial standing.

**9.7 Invitations to Tender**

9.7.1 All tenders issued by the Police and Crime Commissioner shall consist of instructions to tenderers regarding submission information, terms, conditions and specification with a pricing schedule.

9.7.2 Completed tenders shall be submitted by the date and time and in the manner stated in the instruction for invitation to tender (electronic being the preferred method) and shall comply with the public sector requirement(s) around opening of the document.

**9.8 Opening of Tenders**

9.8.1 All tenders shall be opened at one time, which shall be as soon as practicable after the time appointed for their opening in the invitation to tender. The procurement tendering portal should be used where suitable for the procurement process.

9.8.2 Where examination of tenders reveals clerical errors or discrepancies which would affect the tender figure(s) in an otherwise successful tender, the tenderer should be afforded an opportunity of confirming, withdrawing or correcting his offer (the correction of genuine errors is permitted for tenders which are compliant in all other aspects). This should be documented, including the reason(s) for referral back to the tenderer.

9.8.3 The Police and Crime Commissioner delegates to the Chief Executive the discretion to permit the consideration of tenders which do not comply strictly with the above rules, subject to the reasoning behind any discretion exercised being properly recorded.

**9.9 Assessment of Tenders**

9.9.1 Assessment criteria may be made on appropriate technical, qualitative and financial grounds which are relevant to the contract concerned. These should be agreed before the tender is issued in consultation with an appropriate stakeholder group, which should generally include financial and technical/practitioner representation and be agreed with the JCPS

9.9.2 Assessments of the tender submissions are to be carried out by the stakeholder group or their representatives with representation from the JCPS based on the agreed criteria which shall be applied to all tenderers fairly, transparently and consistently. Scores shall be awarded on a consensus basis with the stakeholder group agreeing a single justifiable consensus score as against the agreed criteria and not an average score. Additional interviews, presentations and site visits for larger contracts may be included and the JCPS shall be contacted for advice on this prior to selection criteria being agreed as such decisions must be made prior to the invitation of tenders. Assessments of tender submissions are to be carried out by suitably qualified individuals in a manner that allows for compliance with the procurement regulations relating to the need to provide assessment summaries for all assessed tenders

9.9.3 Those members of staff involved in the assessment process should be mindful of the policy on sponsorship, gifts, loans and hospitality. Where relevant, any conflicts of interest or potential conflicts of interest must be disclosed in accordance with legislation and kept under review throughout the process.

9.9.4 The PCC will have the option to observe assessments of tenders that are above the public contract covered procurement threshold or any contract that is deemed ‘sensitive’.

9.9.5 Where this is deemed relevant by JCPS, members of any tender assessment evaluation panel shall be subject matter experts.

**9.10 Acceptance of Tenders**

9.10.1 The following procedures shall be applied for the acceptance of a quotation or tender:

* for Level 1 Contracts, the force’s standard terms should be utilised however supplier’s Terms and Conditions may be accepted except where issues relating to security are a relevant concern. If there are such concerns, advice should be sought from JCPS prior to placing an order or signing an agreement.
* No agreements relating to renting or leasing of premises or licences to occupy (even at nil cost) may be accepted without reference to Estates Services and subject to approval by the CCCFO who shall update the Police and Crime Commissioner.
* No agreements containing leases of assets may be accepted without advice from the Finance Department and JCPS.
* No agreements containing Intellectual Property Rights issues may be accepted without advice from the JCPS
* No agreements containing data sharing or disclosure provisions may be accepted without advice from the Information Management department.
* No agreements relating to ICT equipment or software may be accepted without approval by the ICT Department in conjunction with JCPS.
* No agreements relating to vehicles may be accepted without reference to Fleet Management, JCPS and subject to approval by the CCCFO if relevant.
* No agreements relating to temporary or agency staff may be accepted without reference to the HR Department and JCPS.

9.10.2 If the CCCFO and/or PCCCFO regard the procurement of a contract to be novel, contentious, repercussive or politically sensitive then the Chief Constable and/or the Police and Crime Commissioner as relevant shall be consulted prior to the acceptance of a tender.

9.10.3 Acceptance shall be made in writing and maintained in a decision log. The lowest or the most advantageous tender, which meets the specification and the quality and technical standards required, should be accepted.

9.10.4 Awards shall be made in accordance with Public Procurement Legislation and with reference to appropriate guidance on good practice.

**9.11 Contracts - Contents**

9.11.1 Other than where collaborative arrangements have pre-determined the form and content of the contract, the following guiding principles will be applied.

9.11.2 In order for the Police and Crime Commissioner to comply with best practice and legislation, Contractors for Level 3 or 4 contracts shall be required to provide details, where appropriate, of:

* The supplier’s compliance with Corporate and Social Responsibilities e.g., Environmental Policy;
* their Business Continuity Plan;
* how they will comply with the Force Security Policy and any security requirements specified by the government.

9.11.3 All Contractors’ staff deployed on force premises shall be required to comply with appropriate Force policies.

9.11.4 Every contract shall specify (as relevant):

* the work, materials, matters or things to be supplied or carried out;
* the price to be paid, with a statement of discounts or other deductions;
* the time or times within which the contract is to be performed;
* that valid undisputed invoices will be paid within 30 days, and all contractors shall be required to include similar provisions in their contracts with sub-contractors (and so on down the supply chain).

Sub-contractors must be approved in accordance with paragraph 9.16.

9.11.5 Formal contracts for the provision of services and the execution of work shall provide for appropriate remedy to be provided by the contractor in case the terms of the contract are not duly performed. The Police and Crime Commissioner may also require sufficient security (e.g., parent company bond) for the due performance of any such contract.

9.11.6 Contract terms shall protect the interests of the Police and Crime Commissioner and Force in relation to Data Protection and Intellectual Property.

**9.12 Contracts - Compliance with Standards**

9.12.1 Where an appropriate British Standard Specification or an appropriate and recognised International Standard is current at the date of the tender, every contract should require that, as the case may be, all goods and materials used or supplied and all services shall be in accordance with that standard. Where an existing collaborative contract is considered to be an appropriate vehicle then the principles of this condition should be considered.

**9.13 Contracts - Cancellation**

9.13.1 Escalation processes including reporting any defaults outside of or during Contract Review Meetings should include JCPS representation.

9.13.2 Should a contract no longer be required (Level 2 and above), written notification shall be given to the JCPS.

9.13.3 Consideration shall be given to notice periods and consequences of early termination where applied. Where termination costs are significant, a business case will be required to support early termination. Approval for early termination costs to be incurred will be in line with the delegated approval limits.

9.13.4 A report will be made to the Police and Crime Commissioner listing any contracts (Level 2 and above) subject to early termination and the reasons why.

9.13.5 A contract termination notice must be completed for all Level 3 and 4 contracts regardless of the reason for the contract concluding.

**9.14 Exceptional Circumstances**

9.14.1 Subject to the provisions of paragraph 9.15 below, the requirements within these Contract Regulations that competition is required for tenders and quotations may be set aside in relation to contracts in the event of exceptional circumstances:

* where it can be evidenced that only one supplier is able to carry out the work or service or to supply goods for technical reasons or because of exclusive rights AND there are no reasonable alternatives
* when this is an extension to an existing contract and there is a genuinely justifiable case to use an existing contractor/supplier to maintain continuity of supply or site experience and/or a change in supplier would result in incompatibility and disproportionate technical difficulties in operation or maintenance
* where the contract is required so urgently that competition is impracticable for example a genuine unforeseen need arises (albeit that a failure to act within appropriate timescales will not constitute grounds for such direct award).

9.14.2 In relation to Level 2 contracts, an individual who believes that they have a case in terms of such exceptional circumstances must provide evidence supporting their conclusion to the JCPS. A direct award or variation of such contract requires the approval of the Head of JCPS. No agreements or orders may be signed until approval for the exemption has been given.

9.14.3 Even where exceptional circumstances apply, every effort should be made to identify value for money by means of limited quotation or through benchmarking against existing arrangements in conjunction with the JCPS.

9.14.4 Some tenders may also qualify for a specific exclusion from the requirements of applicable procurement legislation on grounds of national security. Confirmation must be obtained from the JCPS in the first instance regarding whether such exclusion(s) applied to the proposed procurement.

**9.15 Direct Award**

9.15.1 Subject to prior consideration of whether there are any reasonable alternative goods, works or services available, in relation to contracts of value Levels 2, 3 and 4, the CCCFO (or PCCCFO as appropriate) may approve the direct award of a contract (and/or a variation to a contract), unless barred by statute, in the following circumstances:

* **Prototypes and development / Trial / Proof of Concept:** The contract concerns the production of a prototype, trial or supply of goods or services limited to the early stages of design and development and aimed only at testing the suitability, viability or other research, experiment or study regarding the goods or services. It must not include quantity production or supply beyond that necessary for these purposes.
* **Single supplier:** Where a particular supplier is in possession of intellectual property or other exclusive rights, e.g. distribution rights, which means only that supplier can supply the goods, services or works required ***or*** there is an absence of competition for technical reasons, only a particular supplier has e.g. the knowledge or equipment can supply the goods, services or works required, or there are elements of specific interoperability and/or safety requirements.
* **Additional or repeat goods, services or works:** Direct award to an existing supplier where the goods, services or works are additional or to partly replace existing goods, services or works which are the same or compatible with existing provisions, where a change of supplier would result in the goods, services or works being incompatible with the existing provision and cause disproportionate technical difficulties in operation or maintenance.
* **Urgency:** Where a competitive tendering procedure cannot take place due to extreme and unavoidable urgency (that is not attributable to any act or omission of contracting authority and could not have been foreseen by contracting authority). The contract is required so **urgently** that competition is impracticable.
* **Advantageous terms on insolvency:** Where the award of the contract to a particular supplier will ensure terms particularly advantageous to the contracting authority due to the fact that a supplier is undergoing insolvency proceedings
* **Inability to disclose/publish information for the purpose of safeguarding national security** or there is an overriding public interest in withholding the information
* **Absence of suitable tenders requires a switch to direct award:** If no suitable tenders or requests in response to a competitive tendering procedure are received, a contract may be awarded directly to a supplier, in accordance with section 43 of the Procurement Act 2023

**9.16 Sub-Contractors**

9.16.1 For contracts of Level 2 value and above, JCPS shall approve the use of sub-contractors who are relied upon to provide services under the contract.

9.16.2 In all contracts, regardless of spend, sub-contractors shall be subject to the same Force policies as the contractor which shall include, where relevant and without limitation, vetting, security, confidentiality and data protection requirements.

**9.17 Extension or variation of contracts**

9.17.1 For contracts of Level 3 and above any proposal to vary a contract must be referred for decision by the CCCFO /PCCCFO if the proposed variation would result in a net increase to the initial value of the contract by more than 50%. In addition, any proposal to extend a contract by more than 10% of the original term shall be referred for decision by the CCCFO/PCCCFO.

9.17.2  For the avoidance of doubt, the provisions of paragraph 9.17.1 do not apply: -

* To changes that do not affect its nature and are explicitly provided for in review or option clauses in the original procurement documents, and
* Where the extension of time is expressly provided for under the terms of the original contract

9.17.3.   Any variation which extends or varies a contract shall be made in writing.

9.17.4.   Such changes should only occur in the following circumstances:

* Where the additional works, services or supplies have become necessary where a change of supplier would not be practicable (for economic, technical or interoperability reasons) or would involve substantial inconvenience/duplications of costs
* Where the change that has arisen was unforeseeable despite all due diligence having been exercised

9.17.5  In such cases, a Contract Change Notice must be prepared and published in conjunction with JCPS prior to making the modification.

**9.18 Contract Monitoring**

9.18.1 Where appropriate, contracts shall be monitored and measured by way of performance indicators and be subject to regular review meetings involving the Contractor and Practitioner representation.

9.18.2 Any contract which is subject to significant and continuing performance failures as defined by the contract terms as noted in any Contract Performance Notice prepared in accordance with section 71(3) of the Procurement Act 2023 shall be reported to Chief Officers, along with the steps being taken to remedy the failure.