



Spelthorne Borough Council Procurement Policies & Procedures

04_Managing Contracts

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Managing Contracts

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1. Introduction

Contract Management is an end-to-end process of managing the requirements of procured works, goods and services. Activities involved in Contract Management are referred to as either ‘upstream’ or ‘downstream’ – i.e. those leading up to the award of the contract and those which are required once the contract is active.

The activities carried out before the award of a contract (upstream activities) are often more critical to ensuring successful delivery than those undertaken after award (downstream activities). However, both stages play an essential role in achieving your project objectives.

2. Purpose

This is a high-level procedure intended to provide officers with an introduction and basic understanding of how to manage their contracts with selected providers.

Officers undertaking more complex procurements or who are responsible for the management of complex, high value or strategic projects will need further support from both the Procurement Team and Legal Services. This is particularly important since the introduction of the Procurement Act 2023 (PA23), as the legislation places significant importance on the management of contracts with a whole life value of £5m and over.

This Procedure provides an outline approach to Contract Management, including a checklist of some of the key activities required to ensure your contract is executed successfully.

3. Why Contract Management is important

Council officers are required to ensure that contracts for works, goods and services are procured compliantly. They need to achieve the best value for money possible for the Council. A contract needs to work for both contracting parties for it to be delivered successfully. Getting right the balance of risk held by each party is critical to ensure strong contract performance and the continuity of supply from the supplier, and to building strong working relationships.

A contract may commit the parties to working together for a lengthy period of time and it is therefore important to develop a collaborative open and honest relationship based on trust and mutual understanding.

Once a contract has commenced, it is critical that an effective management regime is in place to ensure that the intended outputs and outcomes are met.

Monitoring performance against the contract Key Performance Indicators and other specified requirements is key to ensuring the contract's success. A successful contract will perform to cost (and budget), and against the specified quality deliverables and timeframes. PA23 has specific contract management requirements, summarised below:

| Area | What PA23 Requires | Which Contracts |
|------------------------------|--|-------------------------|
| Performance Monitoring | Set & publish ≥3 KPIs; report annually and at end of contract | Contracts £5m and above |
| Poor Performance | Issue notices; possible supplier exclusion or contract termination | Contracts £5m and above |
| Implied Terms & Transparency | Include implied terms; publish payment compliance & large payment details | All contracts |
| Modifications | Publish contract change notices; consider standstill periods | All contracts |
| Termination Rights | Terminate on breach or exclusion; supplier must be notified and given right to respond | All contracts |

This is a high level indication of requirements; refer to Procurement or Legal Services for further advice.

4. Contract Management Approach

This procedure recommends a step-by-step approach to contract management which will require you to:

- Demonstrate a clear understanding of the need for the contract (e.g. identifies a solution to a problem)
- Gain the appropriate approvals to proceed with a project which will end in a contract with a supplier
- Consult with stakeholders and put in place the right resources to deliver your project on time, in full and to budget.

Note that this procedure does not apply to contracts of employment.

When starting a project that will result in a contract, you will need to take the following **UPSTREAM** actions:

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| 1. If your project exceeds, or is likely to exceed, £30,000 you must request support from the Procurement Team in accordance with Contract Standing Orders Any project over £5,000 will require a contract and therefore also needs support from Legal Services . |
| 2. Draft a Business Case which clearly outlines the justification for your project. If a project budget has not yet been approved, a Growth Bid will also be required. You may need support from Finance in this regard. |
| 3. Building on the information provided in your Business Case, draft an Outline Specification of your requirements. This document provides a high-level detail of the information that you will provide to the market when procuring your contract. |
| 4. Draft a contract Timetable , ensuring you allow the market sufficient time to respond to your opportunity. Procurement will help with this if the value requires a full procurement which complies with the Procurement Act 2023. |
| 5. Engage with the Market / Soft Market Testing If you have not already done this to enable you to write a full Business Case, you may now want to consider sharing your requirements with providers. The information provided as feedback may further develop your Specification to allow much better project outcomes. Note that under PA23, the process and requirements for Market Engagement are more stringent than under previous procurement legislation, therefore consult with the Procurement team before commencing. |
| 6. Develop Final Specification (please refer to procedure 10_Drafting a Specification of Requirements) This document <u>must</u> detail everything that you need the contract to deliver. If a requirement is not included in the Final Specification, bidders will not include it in their proposal, and as such may not be included in their proposed Contract Price. To avoid costly contract variations once your contract is underway, ensure that the Final Specification is as complete as possible. |

The Final Specification must be signed off by the Budget Holder and then shared with the Procurement team.

The Final Specification is a key document that will inform all other documents in the Tender Pack. For example:

- Tender Questions will be based on the Specification, designed to fully test the capability of bidders to deliver the specified requirements;
- Key Performance Indicators, used to measure the success and monitor the performance of your contract, will be designed around the Specification;
- the form of contract to be used will be determined by the Specification;
- your requirements for reporting and for meeting to review the performance will be detailed in your Specification: and
- the exit arrangements for when the contract ends will also be included.

Procurement will support the Tender process for projects over £30,000. Please refer to procedure 07_Request for Quote and Tender Process for more information.

Once the contract is awarded, the following **DOWNSTREAM** activities need to be carried out. These are activities more typically understood to be Contract Management activities, but are no more or less important to the successful delivery of the contract than the upstream activities:

Also see above for the specific requirements of PA23 for larger contracts.

1. A contract commencement (kick-off) meeting should be held. As a minimum, the authorised personnel named in the contract will attend. Depending on the size, value or complexity of the project, senior representatives from both parties may also wish to, or should, attend the kick-off meeting.

The kick-off meeting will determine the **Terms of Reference** and set the **Agenda** for Contract Review meetings. Building a strong **Supplier Relationship** will be critical to the contract performance.

As a minimum, the Agenda should include:

- a review of **Key Performance Indicators, Service Levels** and any **other performance measures**;

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| <ul style="list-style-type: none"> - project roles and responsibilities; - the project Risk& Issues Register (where applicable); - Actions both from the previous meeting(s) and to be carried out in the next period; - Payments and contract spend against budget. |
| <p>2. Referring to the contract mobilisation and commencement arrangements detailed in the Tender Pack, you will need to work with the Supplier to mobilise the new contract.</p> <p>If this is a re-tendered contract, and the goods or services have been provided by a different, incumbent provider, this will need a careful handover, planned and executed in accordance with both the previous contract arrangements and the new contract.</p> |
| <p>3. Contract review meetings must be set up in accordance with the frequency set out in the Specification / Contract. In the case of IT contracts, contract review meetings must specifically consider risk mitigation with regards to cyber security. Suppliers must be required to provide details of any cyber security risks associated with the delivery of the contract, and advise of any changes in the operational arrangements for data storage, processing and management.</p> |
| <p>4. Contract Performance reporting needs to be established in accordance with the requirements - format, scope and frequency - set out in the Specification / Contract.</p> <p>Officers are required to track contract performance against the benefits assumed in the business case and as specified in the contract, but it should be the responsibility of the Supplier to manage the agreed reporting schedule, ensuring reports are provided without the need for prompting from the Council's contract officer. Where required under PA23, contract performance shall also be published.</p> |
| <p>5. Management of a Supplier's performance against the service levels specified in the contract is critical to ensure the delivery of the full value for money from the contract.</p> |

Officers need to be able to **recognise the early warning signs of supplier poor performance**, which can include:

- requests for upfront payment, or improved payment terms;
- delays to project timelines without prior agreement;
- failure to achieve KPI service levels, or implement adequate improvement measures;
- changes in key personnel;
- Supplier's sub-contractors expressing concern about the Supplier direct to the Council;
- customer complaints about the quality of service etc.

The Procurement team can support Contract Management & Supplier relationship meetings where required.

6. Officers need to allow **sufficient time to re-tender** a new contract well in advance of the end of a current contract, if a new contract is needed.

The larger and more complex the contract the longer the re-tendering process will be. Officers will need to factor in the time required for the internal approvals process and any statutory timeframes required under PA23 (see procedure 07_Request for Quote and Tender Process and refer to the Procurement Team for support).

7. The contract will stipulate the **exit arrangements** which the Supplier is required to make. These may include, where relevant:
- formal notification of contract termination;
 - managing the exit timetable;
 - returning assets (e.g. IT hardware; furniture) provided by the Council for the execution of the contract;
 - arrangements for staff under TUPE;
 - working with the new supplier to transition the contract;
 - records management and data security;
 - vacating Council premises, where relevant;
 - concluding the financial arrangements – payments and or credits due, etc.

5. Summary

The most successful contract management focuses on upstream activities which carefully consider the purpose of the contract and how it will be delivered, and embeds these requirements into the contract

Effective contract management requires the development of strong supplier relationships, which in turn requires a commitment of time and resources from the contract monitoring officer or contract manager. Under PA23, pre-market engagement with suppliers requires new and careful consideration.

Support from both the Procurement Team and Legal Services must be sought for higher value, more complex projects.

Appendix A – Contract Management Action Checklist

Upstream Activities

| ACTION | WHEN TO DO | STATUS | WHO |
|--|---|--------|----------------------------------|
| Legal Services to be advised that a contract will be required (over £5k) | When Business Case approved | | Project Officer |
| Procurement team support is requested and in place (contracts with a value of £30k or over) | When Business Case approved | | Project Officer |
| Set up project team resources, including project sponsor, project lead, and support from procurement, finance, legal, HR, communications support as required | When Business Case approved | | Project Officer |
| Develop a project timetable (with input from the Procurement team) and sourcing strategy | When Procurement engaged | | Project Officer with Procurement |
| Internal approval for sourcing strategy (e.g. from MAT, Committee, Full Council as required) | When draft sourcing strategy has been developed | | Project Officer with Procurement |
| Draft Outline Specification | When project starts | | Project Officer |
| Carry out market engagement or soft market testing, with consideration of the requirements under PA23 | If required, once the Outline Spec is drafted | | Project Officer with Procurement |

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|-----------------------------------|-------------------------|--|----------------------------------|
| Draft Final Specification | After market engagement | | Project Officer |
| Develop Tender documents | Based on Final Spec | | Procurement with Project Officer |
| Draft Contract (using Final Spec) | Based on Final Spec | | Legal Services |
| Tender process & period | | | |

Downstream Activities

| ACTION | WHEN TO DO | STATUS | WHO |
|--|--|--------|--|
| After end of Tender process, and following full internal approval of recommendations to award contract | | | |
| Contract kick off meeting | Once the Supplier has been advised of the decision to award the contract (and any standstill periods have expired) | | Contract officer / manager |
| Contract mobilisation | Period specified in the contract | | Contract officer / manager |
| Contract commencement date | As specified in the contract | | Contract officer / manager |
| Contract signature | As soon after award as possible | | Contract officer / manager with Legal Services |
| Contract review meetings | Frequency specified in the contract | | Contract officer / manager (with support if required) |
| Performance reporting (noting new requirements for high value contracts under PA23). | Frequency specified in the contract | | Supplier (external) / Contract Officer (internal) |
| Plan new contract (re-) tender | Depending on size, value and complexity, well in advance of the expiry of the current contract | | Contract officer / manager with Procurement and Legal Services |

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| Exit Actions | As appropriate for the end of the contract | | Contract officer / manager |
|--------------|--|--|----------------------------|