



Contract procedures

A Parish Council must have included within its Standing Orders (SO)¹, and also Financial Regulations (FR)² a section on contracts which will reflect contract levels for tendering purposes.

The Council are permitted to enter into a contract with third parties in connection with any of their functions³. Botus Fleming Parish Council operates one contract for a grass cutting service, and this contract runs on a four year cycle for tender purposes.

The Standing Orders & Financial Regulations explain the procedure to follow in respect to tendering for the supply of goods or services. In all cases the Clerk/RFO shall invite at least three tender priced quotations for all value contracts. This may not be possible for some service suppliers or required for contracts valued below £3,000 or other exemptions may apply which the Council permits in Standing Orders,

Types of Contract

A Council may discharge some of its duties in a considered manner⁴.

The Legislation relating to a Council's power to enter into a contract under s.111 (1) must also be attached to a statutory power

Councils normally enter into the five categories of contract:-

- supply to the Council of a particular service
- supply to the Council of goods and materials
- selling or purchase of land
- employment contracts where the Council is the employer
- execution of public works

Clerk responsibilities

The Clerk is responsible for ensuring that any contract that the Parish Council enters into is properly evaluated and the value estimated. The Clerk will also prepare a specification (FR 1.105 (d)). The Council's grass cutting contract would be deemed (due to the total budget), to be a contract falling into the "30 day payment rules" but must meet Regulation 113⁵.

The Tender Notice shall be advertised by the Clerk (FR 1.105 (g) subject to SO 18 (d)). Sealed tenders shall be received by the Clerk and at the prescribed date shall be opened in the presence of at least one other Councillor and the tender price recorded (FR 1.105 (e))

The Botus Fleming Parish Council Tendering & Procurement document for grass cutting and maintenance 2021 (subject to approval) is attached

Tendering considerations

To ensure that any contract is enforceable as a contract in law, the following must be complied with:-

- any Third Party quoting for services must be qualified in specific conditions – age, pay or training
- the advertisement for the services must be specific and describe exactly the service required
- Quantum meruit – implies that a service is provided as per the contract and that a reasonable price should be paid for the service (in the absence of a fixed price being mentioned by contract)
- the contract is seen as an obligation between two parties and creates a legal relationship

Contract considerations

For purposes of financial efficiency, the Parish Council should consider the following before entering into a contract:-

- necessity for the expenditure
- value for money – could this be one-off expenditure not requiring a contract
- collaboration – can partners share the cost
- consideration of approved contractors (and provision in the Standing Orders)⁶
- improvement in the quality of services delivered by the Parish Council
- ensure that suppliers and contractors operate in accordance with legislation and the Council's policies
- ensure that suppliers and contractors meet the Public sector Equality duty as detailed in the Equality Act 2010

The value of a contract is the total estimated cost throughout the lifetime of the proposed contract including any anticipated extension period.

Low value contracts valued at £25,000 or below – (SO 19 a (v))

Medium value contracts in excess of £25,000 – (SO 19 c) (not above threshold)

In all instances threshold amounts and the calculation of the procurement shall be based on the total amount payable Net of Vat.⁷

Contract values exceeding £164,176 EU procurement rules apply subject to conditions under⁸ (subject to EU exit ongoing transition rules).

Terms and Conditions of a contract awarded should legally be agreed in writing and kept as proof of the contract entered into.

Any contractor who has been excluded from either an approved contractor list or from not being invited to tender must under legislation be advised, within 15 days of a request, of the Council's decision,⁹ if within a procurement procedure.

Exclusions

To ensure that Council tax-payers are not exposed to the cost of meeting (within the terms of a contract) any Councillor's political ideals or philosophies, a ruling is provided which must be adhered to. The Act¹⁰ ensures that a contract tender is executed in a manner that the Parish Council may secure proper business without obstruction.

Best Value

As confirmation of the Contract considerations (see above) the Parish Council have a legal duty to continuously improve how its functions are exercised with regards to achieving economy and efficiency under Best Value¹¹.

Tender document & Timetable

The attached document explains the criteria as laid out in (SO 19 (d) (i) to (iv))

Christopher Cook – Parish Clerk & Responsible Financial Officer

24 Rashleigh Avenue Saltash PL12 4NS Tel 07523 005414
clerk@botusfleming.org.uk | www.botusfleming.org.uk

Legislation referred to in the text

¹ Standing Order 19 a (v), c, d & f

² Financial Regulations 1.105 (b), (f) & (h)

³ Local Government (Contracts) Act 1997

⁴ (LGA) 1972 s.111 (1) subsidiary powers of local authorities

⁵ Public Contracts Regulations 2015 (SI 2015 No. 102) 113

⁶ (LGA) 1972 s.135

⁷ Public Contracts Regulations 2015 (SI2015 No.102) 6 (1)

⁸ Public Contracts Regulations 2006 (SI No5) amended & Utilities Contracts Regulations 2006 (SI No6) amended

⁹ (LGA) 1988 s.20

¹⁰ (LGA) 1988 ss.17 & 19

¹¹ (LGA) 1999 section 3 (1)