

Procurement Procedure Rules

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Procurement Procedure Rules

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Definitions

“Authorised Officer”	A person who has been granted an appropriate level of delegated authority to act on the council’s behalf.
“Best Value”	The optimum combination of whole life cost and benefits to meet the authority’s requirements. Such a term equates to the MEAT used in EC procurement rules.
“M.E.A.T”	Most economically advantageous tender.
“Constructionline”	Agency of the DTI/treasury that assist councils in England and Wales with pre-qualifying supplier of goods and services to given standards.
“Council”	Means South Somerset District Council
“Supplier”	Any person or body of persons providing, or seeking to provide, good’s services or works to the council.
“EC Rules”	European Union procurement rules.
“Framework agreement”	An agreement that allows the council to call-off from a supplier, a range of predefined goods or services. It’s the call-off or drawing down of goods or services that constitutes a contract.
“Clan”	Centre lead action network, a network of devolved lead procurement contacts taking strategic direction from a the centre.

1. Introduction

These Procurement procedure rules set out the rules by which we spend money on the supplies, services and works we need to deliver our services to the people of South Somerset. This is an important document as it forms part of the Council's Constitution and has been produced as part of our approach to the way we buy things.

The watchwords are competition and transparency. As a public authority we have a duty to allow, and be seen to allow, the market freedom of opportunity to trade with us. If we fail in this duty, a supplier or contractor may have cause for complaint.

Heads of Service are responsible for ensuring that all officers responsible for contracts are aware of these regulations and that the contracts are let in accordance with these regulations. They are also responsible for ensuring that budget arrangements are in place and for liaising with officers in other Service Units where required. There are considerable freedoms available to staff in letting contracts but there are responsibilities as well.

Our Procurement procedure rules therefore have three main purposes:

- to obtain Best Value in the way we spend money, so that we may in turn offer Best Value services to the public;
- to comply with the laws that govern the spending of public money; and
- to protect individuals from undue criticism or allegation of wrong doing.

Some of the rules set out in the document are required by law (EC Procurement rules), others we have put in place to provide a complete, clear and coherent framework in which people can work. In producing them, it was recognised that our Procurement procedure rules need to:

- be written in plain English to make them easy to understand (the meanings of technical terms are given in a glossary.
- reflect the fact that the great majority of our spending is carried out by front-line services and, in line with the policy of the District Council, they help ensure that decisions are made by the right people; and
- recognise that we have certain responsibilities as a public authority for which we need to act collectively:
 - to make the best of our shared buying power;
 - to produce information to comply with the law; and
 - to understand the big picture of our spending activity to allow us to plan, measure and improve performance and to train and develop our people.

This document contains both rules and notes to aid understanding. If these should appear to be in conflict, the rules take precedence. Further advice on any aspect of these Procurement procedure rules or on procurement matters in general can be obtained from the Procurement Manager or from any procurement officer working in the services (*procurement community or CLAN*).

These Procurement procedure rules and the standing orders they support have been laid out in a chronological order that would represent a typical thought process associated with procurement.

2. Compliance with Standing Orders/Procurement procedure rules

1. Every Contract made by the Council shall comply with Standing orders for Contracts and these Procurement rules and no exception shall be made otherwise than by prior direction of the full Council.
2. For the avoidance of doubt these Procurement rules shall **not** apply to:
 - (i) the sale, leasing or purchase of land or of any interest in land;
 - (ii) any contract of employment.
3. The monetary amounts included within these standing orders refer to the value of the contract (excluding VAT) including all elements over the lifetime of the contract.

Every purchase made by the Council is legally a contract.

Purchases whether for goods, services or works, which cost less than £50,000, do not require a contract under seal and can be procured using the Council's official order. All contracts for purchases that are valued at £10,000 or above must be in writing.

The expected value of a contract is calculated by totalling all capital and revenue expenditure over the expected life of the contract. This will include licences and maintenance fees, if applicable. For open-ended contracts, the value should be calculated over a notional four-year period.

3. Best Value

The Council shall, for the purposes of these procurement rules, determine the manner in which invitations to tender for a proposed contract are to be sought or a contract is to be entered into. And only proceed if satisfied that it affords the Council the best value for money in all circumstances. Our Procurement procedure rules apply to all the supplies, services and works we buy, with some exceptions. These are listed at section 17

They also govern the disposal of goods.

The Procurement Manager is the custodian of our Procurement procedure rules and is responsible for keeping them under review. If the EU Directives or any other law is changed in a way that affects these Procurement procedure rules then the Head of Procurement will issue a bulletin and that change must be observed until the Procurement procedure rules can be revised.

If our Procurement procedure rules appear to conflict with EU Directives or any other legislation then such other legislation takes precedence.

Services will have financial management arrangements (FMAs) that set out detailed operational procedures to achieve compliance with these Procurement procedure rules. The operation of, and compliance with, these Procurement procedure rules are subject to internal audit procedures.

4. Meaning of the Council

The expression 'The Council' shall be deemed to include the Executive, Executive Member, Committee, Sub-Committee or Officer to which or to whom and to the extent that authority has been delegated by the Council for the purpose of these procurement procedure rules.

5. Compliance with European Community Directives

All contracts made by the Council or on its behalf will comply with any relevant European Community (EC) Directives as implemented by regulations made under the European Communities Act 1972. In relation to EC procurement, EC Directives become applicable when letting contracts with an estimated value above certain thresholds.

The Directives make detailed provision for methods of specification, advertisement, selecting tenderers, evaluating tenders and awarding the contract.

Appointment of Consultants above EC Limit (currently £140,000)

Purchase of Goods above EC Limit (currently £140,000)

Purchase of Services above EC Limit (currently £140,000)

Commissioning of Works (buildings) above EC Limit (currently £3.6 million)

For any contract anticipated exceeding the EC limits, advice must be sought from the procurement services before any tendering or procurement action is initiated.

6. How the Procurement procedure rules are organised

We start with the decisions that need to be made before the procurement process can begin. This document is laid out in a **chronological order** in terms of the procurement process and talks users through the various procedures and briefly describes the process.

In principle, the rules for higher-value orders and contracts are stricter than for those of lower value. This is so that the benefits of a more thorough, complex process are not outweighed by its cost relative to the value of the supplies, services or works in question.

Owing to the fact that the rules for supplies, services and works are similar, though not identical.

The procedures for low-value transactions are set out first, followed by those for intermediate and higher-value ones. At the highest end of the value scale, we must follow EU Public Procurement Directives, requiring us to observe certain additional procedures, as set out in these Procurement procedure rules.

The remainder of the document sets out the rules for aggregating purchases, using call-off contracts and standing lists and managing contracts. It ends with setting out the rules for electronic procurement and tendering and for obtaining waivers from the Procurement procedure rules.

7. Before We Start

Before starting a procurement process, we need to make sure that we have carefully identified the need and fully assessed the options for satisfying it.

8. Defining the Need

Every order and contract must clearly and carefully specify the supplies, services or works to be supplied, the agreed programme for delivery and the price and terms for payment together with all other terms and conditions that are agreed.

This means knowing in advance of the competitive process the size, scope, and specification of the supplies, service or works required. A useful test is the achievement of the six "rights":

Right Product or Service

Right Time

Right Price

Right Place

Right Quality

Right Quantity.

Consideration should also be given to our Environmental Purchasing Policy, which, along with more detailed guidance on defining the need, is contained in the Guide to Best Procurement Practice (still to be written)

9. Contract Strategy/Getting Started

Once the need is determined, it is then necessary to determine a contract strategy by which the supplies, works or services will be acquired. These Procurement procedure rules govern any option that results in payment or a contract. This means taking a step back from the traditional procurement process and assessing the options and applies particularly to the provision of services. Under Best Value legislation, we are required to complete a formal, evidence-based analysis when considering options for the delivery of a service (though the principles could be applied equally to supplies or works).

The options include:

- (a) not providing the service at all;
- (b) providing the service ourselves (“in-house”);
- (c) someone else to provide the service (“outsourcing”/ provision by the private or voluntary sector);
- (d) providing the service in partnership with someone else (with the private or voluntary sector); and
- (e) by commissioning jointly with another authority.

(Further guidance on options analysis may be obtained from the Guide to Best Procurement Practice or from the Head of Procurement).

10. Guides to Best Procurement Practice

While the Procurement procedure rules are designed to set the rules as clearly as possible, guidance on how to achieve Best Value results in procurement and contracting is contained in a supporting document, the Guide to Best Procurement Practice, issued by the Head of Procurement. This document shows how we can get the best out of the market when we buy the things we need. In particular it contains guidance on:

- defining the need;
- deciding on a contract strategy;
- understanding the markets in which we are dealing;
- using competition and negotiation effectively to share risk and reward with our suppliers and achieve a win-win outcome;
- other ways of improving quality, service and price.

11. Financial Limits

Up to 5,000

Verbal Quotations Under £1000

Under £5000 the only requirement is that the officers ensures that they are ordering goods that offer good value for money. Officers should, where possible obtain sufficient offers to ensure the above is being met. Officers would be advised to obtain any verbal offer at this value confirmed in writing so as to avoid any doubts

Low-value transactions £5,000 to £10,000

Before entering into a Contract for the execution of any work or for the supply of any services which is estimated to exceed £5,000 in value, the appropriate Head of Service shall obtain, wherever practical, a minimum of two estimates of the probable expense of executing the work in a suitable manner. Where the Head of Service considers that it is not practical to obtain a minimum of two such estimates he shall record his reasons for not doing so in writing in a format approved by the Procurement Manager.

For transactions valued at or below £5,000 (£10,000 for works and consultancy services) competitive quotations are not needed, though a written quotation must be obtained from the supplier before a formal purchase order is issued specifying the supplies, services or works and setting out prices and terms of payment. A faxed (or PDF emailed quotation) is acceptable in these cases.

Call-off or Corporate contracts for supplies and services must be used where they exist, regardless of value.

Call-off contracts are agreements with a supplier for the provision of supplies, services or works on agreed terms for a specific period for estimated quantities against which orders may be placed if and when required during the contract period. Council wide arrangements for routine supplies and services and department-specific contracts, e.g., "I.T hardware" placed by Support Services on behalf of E.Gov and framework agreements held by property services.

Intermediate-value transactions £10,000 to 50,000

For transactions valued over £10,000 goods, works or services, but at or below £50,000 for works, at least three written quotations must be invited before a formal purchase order or contract is issued, specifying the supplies, services or works and setting out prices, terms and conditions of contract and terms of payment. Faxed or (emailed) quotations are acceptable in these cases. If only one quotation is received, a waiver from financial procedure rules is required.

Written Quotations

Subject to the exceptions and associated conditions and procedures mentioned in Standing Order no Contract which is estimated to be less than £50,000 but more than £10,000 in value or amount for the supply of goods, materials or services or the execution of any work shall be entered into without at least two valid written quotations first being obtained.

Such envelopes shall be addressed to the appropriate Head of Service and until the time appointed for its opening shall remain in his custody, and all shall be opened at the same time in the presence of the Head of Service (or in his absence a senior member of the Division concerned) and one other senior member of the Division.

Such quotations shall be signed by the Officials present, endorsed with the date and time of opening and listed for information in the monthly Information Bulletin. Provided the Head of Service is satisfied with the lowest, he may accept it, subject to Standing Order

If the Head of Service wishes to accept a quotation other than the lowest, he must report this to the Procurement Manager who will approve the decision to select on the basis of an alternative to lowest price.

Higher-value transactions £50,000 and upwards

For transactions valued at £50,000 to £145,000 and for all transactions valued at over £150,000, prior approval of the proposed tender process must be sought from the Procurement Officer using form PRG1, except that tender processes for building capital schemes that meet all the criteria detailed below should be subject to self-certification by the Head of Engineering & property Services and reported to the Capital officers working group, only for management information purposes using form PRG3 for the purpose.

- a) the value of the scheme exceeds £150,000 but does not exceed the prevailing threshold requiring compliance with the EU Works Directive (Sterling equivalent currently £3.8m);
- (b) the planned tender process complies with CSO requirements for competition i.e., must be advertised.
- (c) the evaluation of tenders is based on MEAT (Most Economically Advantageous Tender) criteria and not lowest price; and that a minimum of 3 written proposals are considered.
- (d) the form of contract is either the current JCT form, PPC 2000 or the NEC partnering forms;

- (e) only contractors and suppliers registered by Constructionline are invited to tender; (once initiated)
- (f) the scheme is not of a potentially high-risk nature utilising complex procurement routes and/or partnerships;
- (g) consultancy services for the scheme are commissioned from constructionline appointed consultants who have been appointed after a procurement exercise compliant with Procurement procedure rules;
- (h) the contract does not require a waiver of Procurement procedure rules under the provisions of section 9; and that adequate contract information is retained by Property Services on capitol construction related programmes.

12. Specifications

1. For each contract a specification should be drawn up which clearly identifies the Council's requirements.
2. Only in circumstances where there is no reasonably acceptable alternative shall a specification specify the use of a particular Sub-contractor or goods or materials of a particular manufacturer or supplier. For the avoidance of doubt the need to achieve standardisation shall be deemed to justify the specification of particular goods or materials
3. Where applicable, the specification should identify relevant European, standards.
4. The specification should also identify the Council's timescale or deadline for completion of the project, where relevant.
5. Prior to the issue of invitations to tender, the specification should be costed to ensure there is a genuine estimate of the value of the contract. This then provides a benchmark against which all tenders can be evaluated.
6. The scope of the specification should reflect as accurately as possible the approved budget for the project. Where the scope of the project has changed in comparison to the budget originally approved, for example significant additional works have been identified, then advice should be sought from Financial Services before proceeding with the tender process. This will help to avoid problems when tenders are received in excess of the budget available.

13. EC Procurement Limits

Additional requirements for transactions valued over EU thresholds exist.

Contract values above which these procedures apply and are governed by the EU Directives:

For supplies and services (including consultancy services):	£150,000
For works:	£3.8m

Procedures governed by the EU Directives

Under EU Directives, the contract may be tendered under the **Open, Restricted** or, in exceptional circumstances, the **Negotiated procedure**. These are essentially the same as the procedures for contracts valued below EU thresholds (see 4.6 above) but with the additional requirements given below.

The EU Directives are very long and only the principal requirements can be given here. If in doubt, advice should be sought from the Head of Procurement.

For each contract, except where indicated below, a Contract Notice must be published in the Supplement to the Official Journal of the European Union (OJEU). Advertisements published additional to this:

- (a) must not appear in any form before a Contract Notice is transmitted to OJEU; and
- (b) must not contain any information additional to that contained in the Contract Notice in OJEU.

Minimum timescales relating to tender procedures governed by the EU Directives are shown in the supporting guide. Where a Prior Information Notice (PIN) announcing a forthcoming Contract Notice has been sent to OJEU between 52 and 365 days before the Contract Notice is sent, reduced timescales may apply.

Use of the Negotiated Procedure governed by EU Directives

Advice should be sought from the Head of Procurement at the earliest opportunity before commencing a tender process governed by EU Directives using the Negotiated Procedure.

Under EU Directives, the Negotiated Procedure may only be used for contracts valued at or over EU thresholds in exceptional circumstances where:

- (a) the Open or Restricted Procedure has been used but was abandoned owing to non-compliant (i.e., unacceptable or irregular) tenders; or
- (b) the contract is for a service and the precise nature of the service required cannot be clearly specified or accurately priced (e.g., some PFI or PPP contracts, bespoke software applications, insurance services, intellectual and artistic services); or

- (c) the contract is for works to be carried out purely for the purpose of research, experiment or development.

Additional rules for service contracts governed by EU Directives
Under EU Directives, services fall into two categories:

- (a) Priority Services (or “Part A” services), which must be advertised in OJEU (most services fall into this category); and
- (b) Residual Services (or “Part B” services), for which a Contract Notice in OJEU may not be necessary, though European Standards must be specified where these exist and a Contract Award Notice must be placed in OJEU no later than 48 days after the contract is awarded.

The lists of Priority and Residual services are reproduced on the Procurement Intranet pages. Detailed advice should be sought from the Head of Procurement where it is believed a service falls into the category of Residual Services.

Consolidation of Directives: public sector and utilities and the harmonization of Procurement regulations came into effect on the 31 January 2006 and covered the following major areas :-

- More consistent treatment of common issues
- Refinements of existing provisions Simplified thresholds expressed in Euros (equiv. £ in UK)
- Thresholds updated every 2 years
- Encouragement to use performance specifications
- More emphasis on ‘equivalence’ of standards and qualifications
- Requirement to publish the relative importance of contract award criteria
- Environmental and social issues addressed
- Electronic means of communicating procurement documentation

Significant additions

- Competitive Dialogue procedure
- Framework agreements
- Central purchasing bodies
- Mandatory standstill period (Alcatel)
- Electronic auctions
- Dynamic purchasing systems
- Exit criteria for utilities operating in open and competitive markets
- Some changes in coverage of Utilities Regulation

More detailed information can be obtain via the corporate procurement unit or by reading the procurement guide

14. Which Tendering Procedure

Subject to Standing Order 11, no contract which is estimated to exceed £50,000 but is below EC limits in value for the supply of goods, materials or services or the execution of any work shall be entered into unless either:

A shortlist of contractors willing to supply the goods needs to be drawn up. There are three methods of obtaining a list of contractors

- Placing a public notice in at least one relevant newspaper or trade journal.
- Using a purchasing arrangement that has already been approved by Committee, for example a corporate purchasing contract.
- Where goods can only be precisely specified by make & model then approval of Management Team may be obtained for the use of written quotations rather than tendering. All other aspects of the Contract Regulations would still apply.

Selection of Contractors

- i) Tenders have been invited from a minimum of six contractors who have been selected by the appropriate Head of Service from the "Constructionline" UK Register of Qualified Construction Services, or equivalent.
- ii) At least one of the contractors selected shall be a local contractor where appropriate. Before contractors are invited to tender for a contract, the relevant Head of Service should check that the contractor is able and willing to tender;
- iii) The selection criteria shall be agreed by the appropriate Head of Service, the Head of Legal & Democratic Services and the Head of Financial Services whenever a list of contractors is compiled from "Constructionline".

Open Procedure

The open procedure is as it states open to all that submit an interest. At least ten days public notice has been given in one of the local newspapers circulating in the area of the Authority and in such one or more trade journals, (if any), circulating among persons who undertake such contracts, stating the nature, purpose of the contract, where further details may be obtained, to apply for permission to tender for its execution and stating the last date and time when applications will be accepted.

After the expiry of the period specified in the public notice, invitations to tender for the contract shall be sent to :

- (i) not less than 6 of the persons or bodies who applied for permission to tender, selected by the Council duly authorised in that behalf; or

- (ii) where fewer than 6 persons or bodies have applied or are considered suitable, those persons or bodies which the Council duly authorised in that behalf considers suitable.

Restricted Procedure

The restricted tendering process means as it states that you can restrict the number of tenders that you deal with. Restricted tendering, where the intention should be that a minimum of three tenderers (or five for those governed by EU Directives) are selected from those who express an interest, is identical to that for open tendering, except that:

- the advertisement should state that a restricted tendering procedure will be used;
- the advertisement should specify the information to be provided by interested parties for the short listing process (this may be by their completion and return of a pre-qualification document);
- on the date specified in the advertisement, invitations to tender should be sent to no less than three tenderers selected by means of pre-determined, objective tenderer selection criteria (or all of them where less than three entrants meet the criteria). The invitation to tender should specify a period of not less than three weeks for the return of tenders.

Negotiated Procedure

This procedure is identical to that for the Restricted Procedure, except that post-tender negotiation is permitted, provided that:

- (a) the advertisement states that a negotiated tendering procedure will be used and that the Council reserves the right to enter into post-tender negotiations on any aspect of the tender;
- (b) all post-tender negotiations are conducted in a manner which provides equal opportunity for all tenderers and which maintains the highest standards of probity;
- (c) a timescale is established for completion of the negotiations;
- (d) the required outcomes of the negotiation are clearly identified and, if possible, quantified;
- (e) all post-tender negotiations must be personally conducted by a person to whom the appropriate level of delegated procurement authority has been delegated by the Senior Manager;

- (f) written records of the negotiation are agreed by the tenderer with which the negotiations have been conducted;
- (g) all post-tender negotiations must be fully documented and kept on file as evidence to support the action taken; and
- (h) at the conclusion of negotiations, each tenderer should be invited to submit a best and final offer under the same procedure as for the receipt and opening of tenders below.

Receiving and opening tenders

Every invitation to tender for a transaction valued over £50,000 should state that:

- (i) no tender will be considered unless it is enclosed in a plain, sealed packet bearing a tender label;
- (ii) the packet should bear no mark that identifies the tenderer; and
- (iii) faxed tenders will not be considered (though tenders may be submitted electronically in the manner set out in 7 below).

The Senior Manager should keep the tender packets locked away until the time specified for their opening. Two officers must open all tenders at the same time, one of whom must work in another department, section or unit. The opened tenders must be recorded on a list of tenders invited.

15. Short listing

The full short listing criterion is only applicable to contracts in excess of £50,000, however officers may wish to use some or all of the conditions in procurement process below this financial limit.

It may be possible to specify the goods required precisely, in which case the key factors to be considered will be price and delivery timescale. A simple short listing process may be appropriate. Where the goods required are difficult to specify precisely or where there are different options available, for example IT software, then detailed consideration of the short listing and decision criteria needs to be made in advance.

Once expressions of interest have been obtained it is necessary to finalise a shortlist of suitable applicants. Only those who meet the shortlist criteria should be invited to submit a tender.

Short listing criteria must be determined in advance and included in the public notice or information issued to those expressing interest.

A financial evaluation is mandatory for all companies before inclusion on a shortlist. This must be obtained from support services.

Other criteria that are recommended are appropriate references, evidence of relevant expertise or experience. Where applicable, criteria, which reflect the obligations or policies of the Council, should be included. For example, health & safety; human rights; personnel policies and sustainable development can be included. Potential candidates can be asked to demonstrate that they comply with applicable legislation or regulations or good practice and this information used to assess their suitability for inclusion on the shortlist. Officers need to ensure there is an appropriate balance between the provision of the goods (quality) and other factors.

The process of shortlisting should be recorded and the reasons for rejecting or accepting contractors onto the shortlist should be documented.

Once criteria have been satisfied and the shortlist completed then the criteria should not be used again at the final selection stage. For example, once a candidate has demonstrated that they are capable of providing the goods in accordance with the specification; they should not be discarded on grounds of capability to deliver at the final selection stage. All the candidates on the shortlist should meet the Council's requirements for that contract leaving the final decision to be determined by the Most Economically Advantageous Tender.

In addition to the companies short listed, it may be appropriate to identify an additional one or two companies as reserves. These may be invited to tender if one of the short listed companies withdraws soon after the issue of an invitation to tender.

16. Resolving problems at the shortlist stage

If insufficient interest in the advert is received or respondents are not considered suitable, it may not be possible to form a shortlist. The following issues should then be addressed:

- Have reasonable steps been taken to advertise the contract? For example was the advert placed in an appropriate journal?
- Are there particular conditions in the market, which make it difficult to get a response?
- Was the advert and information supplied to those making enquiries suitable? Could improvements be made?
- Have different goods been combined in one package when few contractors are able to supply both?

Depending on the outcome of this analysis there are three options:

- Re-advertise, making whatever changes are considered appropriate to the advert or specification
- Approach District Executive for an exemption to be granted to the method of tendering as per (ref exemptions).
- Approach District Executive for an exemption to be granted to the numbers of companies to be invited to tender as per section...

17. Exemptions

Tenders shall not be required to be invited in accordance with paragraph 15 above if:

- (a) for any reason there would be no genuine competition.
- (b) the work to be executed or the goods or materials to be supplied consists of repairs to or the supply of parts of existing machinery or plant. Or are additions to an existing style or design and would involve the council in greater cost and additional work in harmonizing two differing systems, designs or solutions. The treatment of “best value” considerations can be complex and advice should be sought from either your local procurement person or corporate procurement.
- (c) the work to be executed or the goods or materials to be purchased or the services to be supplied are obtainable only from a limited number of Contractors, but in such case a reasonable number of those contractors shall be invited to submit tenders.
- (d) the work to be executed or the goods or materials to be purchased or the services to be supplied are a matter of urgency.
- (e) the work to be executed or the goods, materials or services to be supplied constitute an extension of an existing contract provided that.
 - (i) the new contract is of a similar nature to the existing contract;
 - (ii) it does not exceed 50% of the value of the existing contract;
 - (iii) the existing contract may be extended once only and no extension shall be permitted of a contract previously allowed as an exception under the exceptions procedures in this Standing Order;
 - (iv) the extension is carried out either at or before the conclusion of the existing contract;

- (v) extensions which are estimated to be not more than £50,000 but greater than £10,000 are subject to the prior approval of the relevant Portfolio Holder (or the prior approval of the Executive should the Portfolio Holder so decide); extensions which are estimated to be not more than £100,000 but greater than £50,000 are subject to the prior approval of the Executive and extensions of more than £100,000 may only be authorised by prior decision of the Council.
- (f) where the Council is acting as agent for another authority that authority's requirements as to entering into contracts must also be followed. In the event of a conflict between these standing orders and the principal authority's requirements the latter must be followed.
- (g) another local authority, public body or consortium of local authorities or public bodies has secured beneficial arrangements for the future of the goods, works or services.
- (h) where the Council carries out work using a standard form of contract (e.g. Institution of Civil Engineers Conditions of Contract) procedure requirements may differ slightly to those laid down in these Standing Orders.
- (l) where a condition of civil emergency or a major crisis is affecting the council or the community such that exceptional decisions need to be made in exceptional circumstances, where delegated authority will automatically fall to the officers involved. Where officers will need to place orders and make purchases in rapidly changing circumstances.

18. Nominated Sub-Contractors and Nominated Suppliers

Were a supplier has originally tendered via these procedures and secured a contract to supply goods or services. The council will not seek to apply these rules or the CSO rules that support them into the awarding process by the successful bidder in placing sub-contracts. The winning bidder shall be deemed to be free from all such rules and regulations. However notwithstanding a condition that may nominate or appoint a sub-contractor or local supplier with the original tender documentation. In such a case this condition shall be deemed to be a condition of contract. However officers are reminded that they have duties under a range of other regulations and guidance to ensure that contractors and suppliers act in accordance and in fact are apprised in their ability to take account of such issues as:

Environmental ,sustainability, equalities, fair-trade.

19. Instructions to Tenderers

1. Instructions to tenderers must state :

- (i) The last date and time for receipt of tenders;
 - (ii) That tenders must remain open for acceptance for a specified period;
 - (iii) That tenders must be signed and submitted on the form of tender provided, together with bills of quantities where applicable;
 - (iv) That tenders must be returned in the Council envelope provided which shall bear the word 'Tender' followed by the subject matter to which the tender relates, shall be securely sealed and shall bear no other name or mark indicating the sender or be delivered with or seen to be accompanied by any material indicating the identity of the tenderer;
 - (v) The tenders must be returned direct to the nominated officer indicated on the tender documents.
 - (vi) The requirement that the tenderer will not disclose any information appertaining to his tender to any other party both prior to submitting it and during the period it is held open for acceptance;
 - (vii) That South Somerset District Council do not bind themselves to accept the lowest or any tender and will not be responsible for, or pay any expenses incurred by the tendered in the preparation of the tender;
 - (viii) Late tenders may be considered where there are exceptional circumstances or there is conclusive evidence of posting in time for delivery by the due date and time and the other tenders have not been opened. Disallowed late and other disqualified tenders will be returned to the tenderers by the Corporate Procurement.
2. Whenever the Council need's to make alterations to tender documents sent to tenderers, all tenderers shall be informed of the same change and a full explanation of the change shall be recorded; similarly any answers given to questions raised by any tenderer shall be notified to all other tenderers and a record kept.

20. Receipt of Tenders

All tender envelopes submitted in accordance with these Standing Orders shall remain unopened in the custody of the nominated officer or an officer designated until the time appointed for their opening. An officer receiving a tender shall indicate on the envelope the date and time of its receipt by him.

21. Opening Tenders

Tenders relating to the same subject matter shall be opened at the same time by the nominated officer. All tenders correctly received shall be recorded. An officer receiving a tender shall indicate on the envelope the date and time of its receipt by him. In the case of civil engineering tenders, a copy of the tender summary originally submitted by each tenderer shall be retained and held on the contracts file for that project.

22. Acceptance of Tenders

Council shall normally accept the most economically advantageous tender provided that they shall first have considered a report from the appropriate Head of Service or their nominees on the capabilities and general soundness of the tenderers. In all such cases such pre-qualification must be via the accreditation to the Constructionline database of approved suppliers for SSDC. A tender coming from a supplier who is not on the standard or approved SSDC list of contractors or suppliers, may be considered for award only if as a condition of award the contractor is required to become approved to constructionline within 6 months of award of contract. Failure to comply with this requirement shall be deemed to void the entire contract.

1. Awarding officers need to give consideration to a tender evaluation process, and such a evaluation must clearly have indicated to the bidders what criterion would be given greater weight or value than another. Under this criterion price may not be given the greatest value or weighting other aspects of the bid may be deemed as more important, always giving due regard to the overriding need to meet the criterion of "most economical tender".
2. Should the Council, following the consideration of such report, decide that the "most economically advantageous" tender is not satisfactory, then the same procedure shall be adopted with respect to the next lowest tender and so on. In considering tenders the nominated officer may choose to seek advice Legal, Financial Services and the appropriate technical officer or their respective nominees. Such advices to include where appropriate the contractor's financial suitability, technical competence, past performance and references, Health & Safety policies and practices and Equal Opportunities policies and practices. However if suppliers are or have been selected via the approved supplier list (Constructionline) then these pre-qualifications issues will have been considered.
3. Where examination of the selected tender reveals errors or discrepancies which would affect the figure submitted by that tenderer, then the selected tenderers is to be given details of the errors and discrepancies in the tender and afforded an opportunity of confirming or withdrawing the tender without alteration or correction within a specified time. If the tenderer withdraws, the next selected tender which satisfies arithmetical and technical checks and which would have been capable of acceptance by the procuring officer shall be accepted by

Officers and reported to the Procurement Manager for information. In civil engineering contracts, the tender figure shall be deemed to be the sum of the rates submitted in the tender.

4. A tender may be accepted by the Procurement Board provided the following apply; -
 - (i) Reports and advice shall first have been received and considered which would have had to be received and considered by the Council were they accepting the tender;
 - (ii) The tender is the most economical advantageous tender;
 - (iii) The tender figure is within the approved sum allocated in the Revenue Budget or Capital Program;
 - (iv) The tender figure is not more than ten per cent above the written estimate of the appropriate technical officer or within the approved Budget .
5. Where the most competitive tender is outside the approved estimate provision the Head of Service will either: -
 - (i) Write to all tenderers explaining the situation and giving them the opportunity to lower their tenders to within the approved estimate; or
 - (ii) Report to the District Executive requesting an increase in the estimate provision; or
 - (iii) Report to the District Executive requesting authority to revise the specification and seek new tenders. If it is decided to re-tender, all previous tenderers shall be asked to tender again, and no tenderers shall be given any information about any of the first tenders.
6. If the Procurement board accepts a tender above the sum allocated against the advice of the Head of Financial Services, the acceptance shall automatically be placed on hold and referred to the next meeting of the District Executive for decision.

23. Resolving problems at the tender evaluation stage

If only one compliant tender has been received then it can still be accepted, so long as the minimum number of three companies has been invited to tender. This tender should have been priced competitively and therefore the principle of the need for competition will have been satisfied. Where the lowest compliant tender exceeds the budget available, advice should be sought from Financial Services. There are three possible courses of action: -

1. Obtain additional budget from virement or supplementary estimate. This must be within the limits stated in Financial Regulations. Financial Services will advise on these;
2. Reject all tenders received and re-tender. This will be appropriate where the Service Unit has high confidence in the accuracy of their priced specification; or
3. Identify goods specified that can be omitted from the contract or otherwise reduced to lower the total cost to an acceptable level. This should only be considered where the goods were desirable and not essential and will not need to be carried out and hence funded separately. Since this could amount to a change to the specification you may need to ask all tenderers to quote for the changes.

Post tender negotiations that seek to reduce the price without a corresponding decrease in the specification must not be undertaken.

Dissatisfaction with the way that a tender has been priced may mean that the lowest tender may not be acceptable without further clarification. If it is necessary to clarify pricing with the contractor then officers are recommended to ensure that clarifications are made in writing and that a third party witnesses any meetings and it is documented. If a tender has not been fully priced it should be rejected as a non-compliant tender.

Where errors are found in the tender the action taken should be determined by whether the overall price is dominant or whether the pricing document is dominant. In the former case the contractor should be asked whether he will stand by the tender or withdraw. Where the pricing document is dominant the contractor should be advised of the item and revised total and asked whether they wish to abide by the new tender sum or withdraw. Note: the standard tender form requires the distinction to be made at the invitation to tender stage.

Where the lowest two tenders have quoted the same price, then the decision should be based on quality.

24. Contract Conditions

Every contract entered into by the Council shall be in writing and shall:

- (i) be signed by an officer of the Council duly authorized;(seal not mandatory)
- (ii) specify the work, materials, goods or services to be carried out or supplied including specifications where appropriate;
- (iii) the consideration; (price)

- (iv) the period(s) within which the contract is to be performed;
- (v) such other conditions and terms as may be agreed between the parties;
- (vi) where such contract exceeds £10,000 in value and in any other case where the Head of Legal & Democratic Services so decides, the Contract shall be in a form approved by the Head of Legal & Democratic Services;
- (vii) in appropriate cases where a contract exceeds £50,000 provide for the payment of liquidated damages by the contractor where he fails to complete within the time specified. The amount of such damages shall be determined by the Head of Legal & Democratic Services and the Head of Financial Services in consultation with the appropriate Head of Service;
- (viii) where a contract is estimated to exceed £100,000 the appropriate technical officer should decide whether the conditions of tender may require a contractor to give sufficient security for the due performance of any contract. For example, a Performance Bond with a body certified or approved by the Council or deposit cash in lieu thereof with the Council in a sum equal to 10% of the tender figure.

25. Partnership arrangements

Selection of a partner for the provision of services or on construction project may still be entirely compatible with these contract regulations. At the advertisement, shortlisting and invitation to tender stages it will be necessary to make clear the desired partnership arrangement and it is likely to be appropriate to make the selection of the partner on grounds of non-financial factors as well as price.

Where a partner is to be selected not through a tendering process, but through negotiation, then it will be necessary to gain authorisation from District Executive as detailed in the section above. It will be necessary to demonstrate that the process of negotiation will achieve better value than the selection of a partner through a tender process. For contracts in excess of EU Limits (see Section), advice should be sought from the Procurement Manager before any action is taken. Please seek advice from Internal Audit and Legal and Property Services at an early stage.

26. Projects

All projects that will result in the letting of a contract in excess of £5,000 should be properly planned in accordance with the project Management methodology. The Council has an established methodology, the Project Initiation Document (PID) that should be used to identify the objectives, timescale and resources for the project.

All contracts that are planned should be identified in the relevant Service Plan. All contracts should have a nominated officer to act as project manager. All works contracts should have a different officer nominated to review the final account before it is

authorised for payment. It is the responsibility of Service Units to ensure that the final account is correct prior to authorisation of the final payment.

Where contract management is to be carried out on behalf of a client in another Service Unit, then responsibilities for approving variations to contracts and payment of the final sum should be agreed as part of the PID.

Legal and Property Services should be consulted on the form of contract at the planning stage of the contract. Agreements should not be reached with suppliers/ contractors or consultants on the form of contract without seeking legal advice.

27. Assignment and Sub-Contracting

In every written contract for the execution of work or the supply of goods, materials or services the following clause shall be inserted:-

“The Contractor shall not assign or transfer the whole or any part of the Contract without the prior written permission of the Council.”

“A Contractor shall not Sub-Contract the whole or any part of the Contract without the prior written permission of the appropriate Head of Service.”

28. Insurance

All contracts to which these standing orders relate shall require the contractor to provide to the satisfaction of the appropriate Head of Service and Head of Financial Services an appropriate indemnity against any risk which might otherwise attach to the Council, including public liability insurance cover.

29. Cancellation

In every written contract to which these Standing Orders relate a clause shall be inserted to secure that the Council shall be entitled to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation if the Contractor shall have offered, given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do so for so having done or forborne to have done any action in relation to the obtaining or the execution of the Contract or any other contract with the Council, (whether with or without the knowledge of the Contractor), or if in relation to any contract with the Council, the contractor or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or shall have given any fee or reward the receipt of which is an offence under section 117(2) of the Local Government Act 1972.

30. Supervision

It shall be a condition of any contract between the Council and any person (not being an officer of the Council) who is required to supervise a contract on their behalf that, in relation to such contract, he shall comply with the requirements of these Standing Orders as if he were a Head of Service of the Council.

31. Internal Controls

All Heads of Service when implementing the requirements and procedures as specified in these Standing Orders should ensure that adequate internal controls are operating effectively.

32. Contract register

On acceptance of a tender, all contracts for single services should be entered into the Contracts Register held by Support Services. It is the responsibility of the officer managing the project to ensure the details are provided. This will avoid delays occurring when contract certificates are submitted for payment.

On-going service contracts need not be entered into the Contracts Register and can be paid on invoice

33. Retention of Tender Documents

All tender documentation should be retained by the appropriate Head of Service for the duration of the contract, including any maintenance period. A contract file should be created (this can be either paper copy or electronic, and should contain all documentation from the inception of the idea or BC through to signed agreement and all correspondence appertaining to that contract.

34. Appointment of consultants

The appointment of the successful consultant should follow an evaluation process that complies with the method outlined in the revised "Protocol on the use of Consultants". (Still to be written which will contain values)

At least three quotations for services should be sought.

The contract with the consultant should require them to maintain a suitable level of professional indemnity insurance. Advice on insurance matters should be obtained from the Council's Insurance Officer in Financial Services.

Officers should ensure that intellectual property rights remain with the council in the work that the consultants do as a result of the brief given and that access to such research or work is freely and easily accessible

1. Before the engagement of any architect, engineer, surveyor or other consultant for the purpose of any contract in respect of the supply of goods or materials, the carrying out of works or the provision of any other services, the appropriate Head of Service shall obtain quotations.
2. Each such engagement:
 - (i) shall be evidenced in writing, including details of the basis and frequency of payments identifying the Council employee who will manage and monitor each consultancy project;
 - (ii) shall be subject to the conditions that such architect, engineer, surveyor or other consultant shall at all times be fully covered by professional indemnity insurance and that in relation to any contract, he/she shall conform to the requirements of these Standing Orders, the Council's Financial Procedure Rules and any direction from the Council;
 - (iii) shall at any time during the carrying out of the contract, produce to the appropriate officer or their representative on request all the records maintained by him/her in relation to the contract and on completion of the contract, pass all such records to the appropriate Head of Service.
3. There may be instances where use of these Procurement procedure rules and the associated CSO for the tendering process would be inappropriate, for example, where quality of performance is more important than the lowest tender. In such instances, prospective consultants will be engaged subject to meeting the alternative criterion of demonstrating that they offer the "most economically advantageous tender" Where there is already a specific delegation to the Procurement Manager, such as the delegated authority that the procurement manager has below £50,000 then the appointing officer need to only obtain a waiver from need to obtain 3 quotations.

35. Contract Extensions

Any contract below EC limits may be extended in accordance with its contract terms, provided the corporate procurement unit have been notified using form PRG1.

Contracts should not be extended beyond a period greater than the initial contract length. All contracts subject to EC procurement rules can only be extended in line with the original OJEU notice and EC rules prevailing at the time.

36. Disposing of surplus goods

Services are responsible for the disposal of their own surplus goods. The same competitive process for buying supplies, services and works must also be applied to the

disposal of surplus goods, though separate procedures apply to the sale of land and/or property. In principle:

- competitive bids need not be invited if the goods are valued at or below £3,000;
- if the estimated value of the goods is greater than £3,000 and at or below £25,000 then a minimum of three bids must be invited; and
- if the estimated value of the goods is greater than £25,000 then a minimum of four sealed bids must be invited and opened in accordance with the procedure in 4.8 below.

In case of doubt, professional advice should be sought when making valuations. For higher value items, sale by auction should be considered as an alternative to sealed bids, but care should be taken to evaluate the full cost of the process.

In all cases, the highest bid received must be accepted.

- (i) no bid will be considered unless it is enclosed in a plain, sealed packet bearing a bid label;
- (ii) the packet should bear no mark that identifies the bidder;
- (iii) faxed bids will be considered provided they are submitted directly to the procurement manager who will hold the faxed copy securely until the closing date.

The Senior Manager should keep the bids locked away until the time specified for their opening. Two officers must open all bids at the same time, one of whom must work in another department, section or unit. The opened bids must be recorded on a list of bidders invited.

37. Performance Bonds

For contracts for works over to £500,000, the HOS responsible should certify whether a Performance Bond would be appropriate. Advice on this should be sought from Legal and Corporate Procurement.

Where a bond is not going to be used then alternative arrangements to protect the Council's interests will be required. This can take the form of :-

The application of a higher rate of retention. For example, 10 per cent instead of 5 per cent.

Where a bond is required it should be included in the specification and tender documentation.