

Procurement Procedure Rules

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Procurement Procedure rules

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1. Introduction

- (a) This document sets out the Procurement Procedure Rules (the “Rules”) that officers at SSDC must follow when spending money on the goods, services and works needed to deliver our services to the people of South Somerset. The Rules also set out how to handle the disposal of any Council assets that are no longer required. This is an important document and it forms part of the Council’s Constitution .

- (b) Our Rules 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; the Rules are the internal rules that officers must follow in dealing with any procurement or disposal;
 - to protect individual officers from undue criticism or allegation of wrong doing. Following the Rules will give an officer comfort that s/he has acted properly whilst failure to follow the Rules is disciplinary offence.

- (c) In addition, this document gives general guidance and good practice in the procurement process and officers should have regard to this when setting out their own procurement process. Where general guidance appears to conflict with the Rules then the Rules have precedence. Where Officers are unclear which aspects are Rules and which guidance they should seek advice from the Head of ICT and Procurement.

- (d) Each Head of Service must ensure that officers within their service area having responsibility for procuring contracts (the Responsible Officer(s)) have received adequate training on the role and are aware of and follow the Rules and guidance when letting contracts. The Head of Service must also ensure that budget arrangements are in place to fund the procurement and that appropriate liaison with officers in other services takes place as necessary to maximise joint procurement opportunities.

- (e) The Rules :
 - set out the standard procedures to be followed but further advice should be sought from the Head of ICT and Procurement if the procurement is more complex or if so advised in these Rules;

- seek to get the best deal by using our shared buying power wherever possible including using corporate contracts where these have been negotiated e.g. stationery contracts;
 - allow a robust audit trail to be produced
 - enable statistical and other information to be collected to comply with the law and to enable us to understand the “big picture” of our spending so we can plan, measure and improve the efficiency of our procurement
 - are written to make them easy to understand and the meanings of technical terms are given in a glossary at the end of the document.
- (f) Further advice on any aspect of these Rules or on procurement matters in general can be obtained from the Head of ICT and Procurement or from any CLAN member.

2. How the Rules are organised

- (a) Some types of procurement are excluded from or are exempt from the Rules in total or in part and these are set out in Section 3 below. Approval is needed for some exemptions and, in all cases, appropriate records must be kept to identify and justify the exclusion or exemption relied upon.
- (b) General points to be considered or followed in all procurements are set out in Section 4 below
- (c) The Rules applying to most types of procurements are set out according to the different value ‘bands’ for the procurement in question with the higher value bands needing a more rigorous process. These bands are set out in Section 8 with advice on how to estimate the value of the procurement is set out in Section 7. In principle, the greater requirements for the higher value procurements reflect the greater risk to the Council involved in these contracts. Where the contract, although low value, is high profile for the Council or is likely to represent a high risk then it is advisable to follow a more rigorous process set out for a higher value band. Officers should seek advice if there is any doubt as to the best process to follow.
- (d) The Rules cover 3 types of procurement – those relating to purchasing goods, those concerning the undertaking of services or those involving the execution of works on behalf of the Council. Although the Rules are broadly the same slightly different considerations may apply to each type of procurement and, where this is the case, these are highlighted.

- (e) The Rules and guidance on European law are covered in Section 5. Where these laws conflict with these Rules and/or UK domestic law the European law will take precedence so it is very important to read this section.
- (f) If the procurement may involve the transfer in or out of staff (insourcing or outsourcing) then special considerations and laws apply and urgent preliminary advice should be sought from the Head of ICT and Procurement before commencing the procurement.
- (g) The Rules and guidance relating to the tendering process from start to finish is set out in Section 9. This section represents good practice for the smaller value procurement bands but must be followed for the higher value bands i.e. over £50,000.

3. Exclusions and Exemptions

Note: no exemption or exclusion is possible where this would conflict with the Council's obligations or duties under the European law.

3.1 Exclusions

- (a) For the avoidance of doubt these Rules shall **not** apply to:
 - (i) the sale, leasing or purchase of land or of any interest in land;
 - (ii) any contract of employment (but see Section 2(f) above);
 - (iii) purchases by auction, or second hand or used items where very limited choice exists;
 - (iv) grants to external organisations.
- (b) Where there is any query about whether the Procurement in question falls within any of the Exclusion categories further advice should be sought from the Head of ICT and Procurement.

3.2 Exemptions available automatically

- (a) Tenders shall not be required for the following procurements: -
 - (ii) Where a condition of civil emergency or a major crisis affecting the Council or the community at large, such that exceptional decisions need to be made in exceptional circumstances as a matter of urgency, then delegated authority will fall, automatically, to the Head of Service involved to make the procurement decisions necessary without following the Rules where this hinders dealing

effectively with the emergency. If the value of such orders exceed £50,000 a full report must be made to the next District Executive meeting outlining the reasons for the exemption being used.

- (ii) Where the Responsible Officer orders work to be executed or goods or materials to be purchased or services to be supplied in rapidly changing circumstances to meet the emergency and the value of such orders exceed £50,000, a full report must be made to the next District Executive meeting outlining the reasons for the exemption being used and the extent of its use.
 - (iii) Where an extension of an existing contract is permissible – see below under ‘Extensions’.
- (b) Where the Council is acting as agent for another authority rather than procuring on its own behalf then that other authority’s standing orders and requirements concerning contracts must be followed instead. Any arrangement to act as agent for another authority must itself be authorised by the appropriate officer or committee;
- (c) Where 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 and it is lawful for the Council to make use of such arrangements – see below under Other Types of Procurement;

3.3 Exemptions available subject to prior written approval

- (a) The following exemptions may be given with the written approval of the Head of ICT and Procurement who will record of each such approval with reasons for it being granted: -
- (i) Where a contract for the execution of works or the undertaking of services or the supply of goods involves highly specialised technical, scientific or artistic knowledge such that it is not possible to achieve competitive tenders;
 - (ii) Where the work to be executed or the goods or materials to be supplied consists of repairs to or the supply of parts for existing machinery or plant or are additions to an existing style or design which would involve the council in greater cost and additional work in trying to harmonise two differing systems, designs or solutions;
 - (iii) Where the purchase is of patented or proprietary items and any form of tendering would not be appropriate.

- (b) An exemption may be given with the written approval of Management Board who will ensure that a record is kept of each such approval with reasons for it being granted where the Responsible Officer can prove that exceptional circumstances exist, such that compliance with these Rules would have put the council or a particular project at risk of failing to reach external funding deadlines
- (c) An exemption may be given with the approval of District Executive where any class or category of procurement which has been made exempt by resolution of District Executive or any authorised committee for a given period or specific project (which must be defined);

4. General Points to be followed

- (a) Every purchase made by the Council is a procurement and is legally a contract whether made in writing or verbally or by implication. Use of the terms 'procurement' and 'contract' is interchangeable and no special significance should be drawn from the use of either term in these Rules. Similarly, there is no fundamental difference between the terms 'quotation' or 'tender' - both represent the contractor's 'offer' – usually the price to be paid - to provide the goods, services or works in question. The latter term tends to be used for the more formal process used in higher value procurements.
- (b) Every procurement undertaken/contract entered into by the Council must comply with these Rules and no exception may be made otherwise than under the exclusions and exemptions set out in Section 3.
- (c) All construction and civil engineering work procured should be through the Constructionline system.
- (d) Every procurement must comply with
 - all relevant statutory provisions;
 - the relevant European law;
 - the Council's constitution including, these Rules, the Financial Procedure Rules, and the Scheme of Delegation;
 - the Council's strategic objectives and policies including the Procurement Strategy.
- (e) **Health and Safety** – It is vital that all contracts are procured and contractor's selected in accordance with the Council's Health and Safety Policy and specifically Chapter 9 of that Policy.

- (e) **Whistleblowing** - all contractors must be given a copy of the Council's Whistleblowing Policy.
- (f) **Equality and Diversity** - all contractors must be advised of the Council's legal duties to promote equality and remove discrimination in the provision of its services. Each contractor, and any subcontractors they are permitted to use, must follow (and given a copy if possible) such Equality and Diversity Policies as the Council has produced and are relevant to the procurement concerned. Equality factors can and should play a part in the selection of contractors and the evaluation of contracts and the Head of ICT and Procurement can give advice on how these aspects may be incorporated into the procurement process.
- (g) **Insurance** - For all contracts Responsible Officers should assess the risks involve in the procurement and require the contractor to provide an appropriate level of indemnity and insurance against any significant risk identified where the council could face liability. This should including public liability insurance cover and, where the service is being outsourced or may be insourced, an indemnity to cover liabilities that may arise under the Acquired Rights Directive, the Transfer of Undertakings (Protection of Employment) Regulations 2006 and the Code of Practice for Workforce Matters. Further advice on insurance matters is available from Financial Services.
- (h) **Parent Company Guarantee/Performance Bond etc** - the financial standing of a possible contractor to provide goods or services or undertake works for the Council should be assessed at the earliest opportunity. Where this assessment of financial standing identifies a significant financial or service risk if the contractor was appointed and the Responsible Officer still wishes to include the contractor on a shortlist of tenderers or wishes to award the contract to that contractor, then either a Parent Company Guarantee (PCG), a Performance Bond or some other satisfactory arrangement to protect the Council's interest will be required e.g. including a provision in the contract to retain part of the payment due in case the contractor defaults. Advice regarding assessing financial standing, drafting and securing suitable PCG/Bonds or other arrangements should be sought from the Head of ICT and Procurement or Financial Services.

Where a parent company guarantee is used the Responsible Officer should ensure that the 'parent' is capable of performing the contract on the contractor's behalf if this become necessary.
- (i) **Internal Controls** - all Heads of Service when implementing the requirements and procedures as specified in these Rules shall ensure that adequate internal controls are in place and are operating effectively.

- (j) **Exclusion of contractors** – There are circumstances where the Council may exclude a tenderer from taking part in a procurement exercise or may disqualify its tender. For example, where the Council finds that a contractor has breached competition law e.g. by involvement in collusive bidding practices or cartels it may use its automatically exclude that tenderers from participation in a bid. The Council may decide to admit such a tenderer where evidence is presented to satisfy the Council that the contractor has taken sufficient steps to regularise its tendering practices. Similarly, where a contractor has failed to follow the Code of Practice for Workforce Matters etc with regard to terms and conditions of staff who transferred to it then such a contractor may be excluded from future tendering opportunities. In all cases where it may be necessary or desirable to exclude a particular contractor it is advisable to seek advice first from the Head of ICT and Procurement.

5. Compliance with European Law

- (a) All contracts made by the Council or on its behalf must comply with European law and, in particular, the EC Rules. The EC Rules apply to written contracts with an estimated value (see section 7 on how to calculate this) above specified thresholds. Different thresholds apply depending upon whether the procurement is for goods, services, or works, and are set out below.
- (b) Where this Directive applies its detailed provision must be followed and these are set out in the corresponding UK Public Procurement Regulations (the Regulations). The Regulations cover, amongst other matters, how the procurement must be specified and advertised, how tenderers are selected, evaluation criteria and award. Specific notices and formats must be followed and because of the complexity of such rules advice should be sought from the Head of ICT and Procurement.
- (c) The current thresholds from 1st January 2008 are:-
- Appointment of Consultants above EC Limit (£139,893)
 - Purchase of Goods above EC Limit (£139,893)
 - Purchase of Services above EC Limit (£139,893)
 - Commissioning of Works (e.g. buildings, bridges and other civil engineering schemes) above EC Limit (£3.5 million)
- (d) Where the contract is one of a series that whilst each is under the threshold the total if aggregated would exceed the threshold then, again, advice from the Head of ICT and Procurement must be sought.

- (e) Where the value of any procurement would exceed the threshold set out in (c) or is within 5% of it, then the procurement should be treated as falling within the EC Rules threshold and further advice must be sought before any procurement action starts.
- (f) Officers should be aware that the European courts have extended the scope of the Directive and European law generally so that some transactions not traditionally thought of as being 'caught' are now covered. For example, the Directive covers **all** expenditure by the Council (except some narrow, specified exclusions set out in the Directive) including, for example, transactions where the works are undertaken by the private sector but 50% or more is funded by the Council or from Lottery or Government grants or other parts of the public sector. Further advice should be sought from the Head of ICT and Procurement if an officer is in any doubt as to whether the Directive or an aspect of European Law applies.
- (g) Even where the value of the contract is below the thresholds set out in (c) the general requirements of European law (as set out in the Treaty of Rome as amended) still apply. This means that the following principles should be followed in all procurements as far as possible: -
 - (i) **Equal treatment** – e.g. not giving more information to one company compared to another;
 - (ii) **Non-discrimination** - e.g. not treating less favourably contractors/suppliers from other nationalities;
 - (iii) **Transparency** – e.g. being open and up-front about the rules, procedures and processes you will use for the procurement and a how decisions have been made. This also covers providing sufficient advertising of the fact that procurement is taking place so firms can make enquiries/challenges;
 - (iv) **Proportionality** - making the means proportionate to the ends – e.g. not asking for excessive or irrelevant information where less would be adequate;
 - (v) **Mutual recognition** – e.g. being willing to assess whether other countries standards, qualifications etc, are equivalent to UK ones or good enough for the matter in question.

6. Contract Strategy/Getting Started

- (a) These 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 available. This process applies particularly to the

provision of services. Under Best Value legislation, officers 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 goods or works).

(b) The options include:

- not providing the service at all;
- providing the service ourselves (“in-house”);
- someone else to providing the service (“outsourcing”) provision by the private or voluntary sector);
- providing the service in partnership with someone else (with the private or voluntary sector or another local authority or public body); and
- by commissioning jointly with another authority or public body.

N.B. Further guidance on options analysis may be obtained from the Head of ICT and Procurement.

7. Estimating the Procurement Value

- (a) The dividing up of contract values to avoid the more stringent requirements of higher spending limits is strictly forbidden although it is acceptable to package contracts in a way which allow the council to obtain more competitive prices or better value. Every effort must be made to assess, accurately, the full cost of the procurement, and this should include, any maintenance contracts, optional extras and updates etc.
- (b) The contract value is the estimated cost of the contract over the whole period of contract (four years if ongoing). Therefore, for example, a contract for four years with a cost of £20,000 per annum has a total value of £80,000.
- (c) Where the estimated value is under the threshold but within 5% of the EU threshold you must seek further advice from the Head of ICT and Procurement – see 5(e) above.
- (d) The monetary amounts included within these Rules refer to the value of the contract (excluding VAT) including all elements over the lifetime of the contract.

8 Financial Categories/Bands

- (a) These are the minimum requirements to be followed when purchasing goods, services, or works for the Council. Above where the procurement is high profile or represents a significant risk to the Council or customers then a more extensive procedure relating to one of the higher values should be followed. Officers should seek further advice from the Head of ICT and Procurement in case of doubt.

8.1 Transactions up to £5,000

- (a) For contracts under £5,000 the Responsible Officer must take reasonable steps to demonstrate that s/he is obtaining value for money from the procurement. It is advisable to get any verbal offer(s) confirmed in writing including a clear description of the goods/services being procured to ensure absolute clarity of what is being purchased. This avoids any misunderstanding and to provide a good audit trail.

8.2. Transactions £5,001 to £25,000

- (a) The Responsible Officer shall obtain, wherever practical, a minimum of three written quotations. Where it is considered that it is not practical to obtain the minimum s/he shall record, in writing, her/his reasons for not doing so in a format approved by the Head of ICT and Procurement.
- (b) A written quotation must be obtained from the chosen contractor before a formal purchase order is issued or a contract concluded. The relevant goods, services, or works must be specified in sufficient detail (see below on 'Specifying the Contract') and the agreed contract conditions (see below on 'Contract Conditions') included e.g. price and terms of payment, timescales, performance standards. A faxed (or email quote) is acceptable in these cases.

8.3. Transactions £25,001 to £50,000

- (a) A simple but more detailed specification must be prepared identifying the Council's requirements for the goods, the services or the works to be provided (see below on 'Specifying the Contract').
- (b) At least three written quotations must be invited before a formal purchase order is issued or a contract concluded. The order/contract should include all key terms and conditions of contract e.g. the prices to be paid (including any discounts), the terms of payment, any default/termination provisions to be applied (see below on 'Contract Conditions' for more details). Faxed or emailed quotations are acceptable in these cases.

- (c) If less than three quotations are received then the Responsible Officer can accept the quote which best meets the award criteria chosen (see 'Evaluation of Tenders' below), however, a written record must be kept on file outlining the circumstances and why this tender represented value for money.

8.4 Transactions £50,001 – European Directive Threshold (see '5'(c))

- (a) A more detailed specification must be provided identifying the Council's requirements for the goods, the services or the works in question (see below on 'Specifying the Contract');
- (b) All relevant contract conditions (see below on 'Contract Conditions') must be included and an appropriate framework for monitoring and reporting performance put in place to ensure compliance with the contract.
- (c) Responsible Officers should follow the Rules and guidance set out in Section 9 too concerning the tendering process unless on other the special types of processes outlined in section 10 are to be followed. Advice on these special procurement options is available from the Head of ICT and Procurement.

8.5 Works Procurements over the European Directive Threshold (see 5(c))

- (a) For transactions valued at over £139,893 prior advice of the proposed tender process must be sought from the Head of ICT and Procurement.

9. The Tendering Process

9.1 Types of tendering procedure

- (a) There are several types of tendering procedures that can be used and the Responsible Officer should select the procedure most appropriate to the procurement being undertaken.

(1) Open Procedure

- (a) The open procedure is a one-stage process so that every contractor who expresses an interest will be sent the tender documents and is invited to submit a tender/quotation.
- (b) Open procedure is used mainly where there are a limited number of providers in the market and so few tenders/quotation can be expected, as every bid is evaluated need to consider every bid.

- (c) The Responsible Officer must have prepared the tender documents e.g. specification, pricing schedule, contract conditions etc, by the time the notice/advert appears so they can be immediately dispatched as and when a contractor expresses an interest.
- (d) The public notice/advertisement used must state the type, nature and purpose of the contract e.g. a 5 year grounds maintenance contract to maintain the footpaths within South Somerset, its value or value range, where further details and the tender documents can be obtained and stating the last date and time when applications will be accepted i.e. the closing date.
- (e) Where EC Rules apply then there are prescribed time limits to follow throughout the process (see the Head of ICT and Procurement for more details). In all other cases, then adequate time should be allowed to enable those contractors who wish to tender to do so and the closing date must be set a minimum 10 working days after the public notice/advert appeared. The closing date must be selected to allow that enough time for the contractors to provide all the information and documents the tender document requires e.g. method statements, risk register pricing information, in many cases a month or more is appropriate.
- (f) The public notice/advert must be placed in one of the local newspapers circulating in the District and in such one or more trade journals, (if any), circulating among persons who undertake such contracts. In addition, where EC Rules apply then Notices may need to be completed on line for insertion in the Official Journal of the European Union (seek further advice if this is the case)
- (g) See section 9 below re conduct during the tender period
- (h) On the Closing Date specified in the public notice/advert all the tender must be checked for errors and qualification and then evaluated according to the predetermined criteria set out in the tender document – see section 9 below re evaluation. In addition, checks on financial standing and health and safety policies and procedures should be undertaken, references on past performance taken up and all other relevant matters reviewed and confirmed as satisfactory.
- (i) See section 9 below re award and post award matters

(2) Restricted Procedure

- (a) The restricted tendering process is a two stage process whereby those who express an interest in undertaking the contract are asked to

complete a pre-tender questionnaire so that evidence of finances, technical ability etc can be gathered and used to short list which contractors are invited to tender.

- (b) This type of tendering allows you to restrict the number of tenders that you have to evaluate and so is appropriate where there is likely to be a lot of interest and/or a well-developed market.
- (c) Restricted tendering is also most useful where the tender documents e.g. specification, pricing schedule, contract conditions etc, are not finalised for dispatch at the time the notice/advert appears. By building in a shortlisting stage it allows time for these documents to be developed whilst an initial assessment of the financial standing, references etc of those expressing an interest is carried out.
- (d) Whenever possible, an outline specification should be prepared for dispatch with the pre-tender questionnaire so the scope and extent of the contract is clear.
- (e) The Notice/advertisement should state that a restricted tendering procedure is being used and either the Notice/advertisement should specify the information to be provided by those interested in tendering or this information can be included in the pre-tender questionnaire instead. Details of where to obtain and return the questionnaire should be given in the Notice/advertisement.
- (f) The Notice/advertisement should state the closing date for expressing an interest and whether any late expressions will be considered. After this date all those who have expressed an interest should be assessed and a short list drawn up. Rules on advertising contracts are set out below.
- (g) Short listing must be made against pre-determined objective criteria and the details of the factors should be included in the notice/advert or included in the pre-tender questionnaire sent to all those expressing an interest.
- (h) A financial evaluation is mandatory for all contractors before inclusion on a shortlist. This can be obtained from Support Services.
- (i) Other criteria that are recommended for use in the shortlisting stage are details of other contracts of a similar nature and value undertaken in the past 3 years (so technical references can be obtained evidencing relevant expertise or experience).

- (j) Where applicable, criteria, which reflect the obligations or policies of the Council, should be included. For example, health & safety policies/procedures; equalities and personnel policies, sustainable development etc. 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.
- (k) Care should be taken in selecting the criteria to be used in the short listing stage as once criteria have been used at that stage then it may not be used again at the evaluation of tender stage. For example, if references are taken up at the shortlist stage then they should not, normally, be either taken up again or reconsidered at the final selection stage.
- (l) Ideally, the shortlist criteria should help identify the contractors who meet a general suitability level to undertake contracts of this type and value whilst the tender evaluation criteria will help select the most suitable contractor to perform the contract itself. Therefore, it is possible to look at the same criteria again if another, more specific, aspect of that criteria is considered e.g. at short listing stage the assessment could be of the Contractor's health and safety policies generally whilst at the final evaluation stage the specific risk assessments relating to the contract itself can be examined.
- (m) The extent and scope of the criteria used should be proportionate to the value or importance of the contract and care should be taken to ensure the requirements for contracts valued at under £50,000 are not unduly onerous.
- (n) Only those who meet the shortlist criteria should be invited to submit a tender. The minimum short list is 3 contractors where at least 3 contractors meet the criteria but in most cases 5-8 contractors would be appropriate to allow for some contractor's failing to tender and to ensure enough competitive bids are received. Where less than 3 contractors meet the criteria advice should be sought from the Head of ICT and Procurement and if EC Rules apply then advice on minimum numbers should be sought anyway as different rules apply.
- (o) Where the number of those meeting the criteria after assessment is too large then the selection of an appropriate number can be based on any non-discriminatory basis e.g. drawing of lots.
- (p) A record should be kept of the shortlist chosen with the reasons for rejecting or accepting contractors onto the shortlist in case of challenge

- (q) The invitation to tender should specify, amongst other things (see below) a closing date for the return of completed tenders and this should be not less than three weeks after their despatch. In most case a longer period would be appropriate - see (1)(e) above re considerations to bear in mind.

(3) Other types of Procedure

- (a) Where it is difficult to precisely specify the service, works or goods to be provided or there is some other reason why the Open or Restricted Procedure would be inappropriate, then advice on and authority to use other procurement processes e.g. Competitive Dialogue or Negotiated Procedure, should be sought from the Head of ICT and Procurement. Details of these procurement types are set out in section 10.

9.2 Advertising

- (a) Any contract, for the supply of goods or services or the execution of any work, which is estimated to exceed £50,000 in value but is below the relevant EC Rules limits must be advertised by placing a public notice in at least one relevant local newspaper and one relevant trade journal
- (b) Advertising may not be necessary where: -
- Where a corporate purchasing arrangement is in place that has already been approved by Committee, e.g. for stationery purchasing contract.
 - When using Constructionline (see below)
 - When accessing other framework agreements etc however, advice should be sought from the Head of ICT and Procurement where such access is required.

9.3 Specifying the Contract

- (a) The specification sets out what the contractor must provide in terms or undertake – in terms of goods, services or works - under the contract. The scope and detail included should be appropriate to the value of the contracts and the risks and impact involved in the procurement with lower value or lower risk procurements needing a briefer and less comprehensive specification.
- (b) For all procurements a written specification (or a clear description for procurements valued at less than £5,000) must be drawn up which clearly identifies the Council's requirements. The Responsible Officer

should consider whether the specification ought to identify, amongst other things: -

- what is wanted, giving as much detail as possible e.g. if goods the size, colour, quality, thickness, speed, durability etc or if a service the details of the service, frequency, timescales; qualification and skills of staff etc;
- where it is to be delivered – which office, which person, which desk, which location, which building;
- the relevant standards of performance or quality required (the relevant European standard or its equivalent to be met);
- when you want it – the relevant timescale(s) and/or deadline to be met for completion of the contract or project or any part of it e.g by 'x' date, next week, every week for the next six months etc;
- how the goods, services or works are to be priced – e.g. price for bulk purchases, list of prices (bills of quantities); is there a minimum number to be ordered (this can offer better value); what discounts are offered;
- how and when payment is to be made including any provisions for interest for late payment e.g. payment after 'x' days, in advance, in stages, by cheque/BACS etc;
- if any guarantee etc is required – e.g. servicing and maintenance or for a service contract an 'out of hours' or 'recall' service;
- any default provisions which are to apply where the contractor does not perform as required or meet the standards laid down;
- the situations under which the contract may be terminated and the provisions to apply upon termination e.g. transfer of assets and staff, return or transfer of data (including IT data) in a suitable format;
- how disputes are to be resolved; and,
- any reporting/statistical requirements.

- (c) Where the Responsible Officer wishes to use a particular sub-contractor or where a particular manufacturer or supplier must be used for the supply of goods or materials the advice should be sought from the Head of ICT and Procurement to ensure that specifying such a requirement is lawful.

- (d) Wherever possible, the specification should be costed to ensure the estimate of the value of the contract is realistic. This sets a benchmark against which all tenders can be evaluated and provides evidence to allow any tender which is significantly below the benchmark to be challenged and, where a satisfactory response is not received, may justify the tender being rejected as 'abnormally low'.
- (e) The scope of the specification should reflect as accurately as possible the approved budget for the contract or project. Where the scope of the contract or project has changed in comparison to the budget originally approved, for example where 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.

9.4 Contract Conditions

- (a) Appropriate contract conditions need to be included to ensure the contract is sufficiently clear and binding upon the contractor. Again, lower value/lower risk contracts will need fewer conditions but the conditions set out below would generally be considered as a minimum.
- (b) Every contract entered into by the Council shall be in writing and shall:
 - (i) be signed by the appropriate Head of Service and in some cases sealed (Legal and Democratic can advise on this as required);
 - (ii) specify the work, goods or services to be carried out or supplied by providing an appropriately detailed specification as necessary;
 - (iii) state the price or other consideration to be given in return for performance;
 - (iv) specify the period(s) within which the contract is to be performed and/or other timescale and standards to be met;
 - (v) set out such other conditions and terms as may be required by the Council or have been agreed between the parties;
 - (vi) require that it be a condition of any contract between the Council and any person (not being an officer of the Council) who is required to supervise such a contract that, in relation to that contract, s/he shall comply with these Rules.

- (vii) include within every written contract to which these Rules relate a clause to enable the Council 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 it or acting on its 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.
- (viii) include a certificate or declaration for the tenderer to complete confirming that the tender/quotation is bona fide and not tainted by collusion or bad faith (appropriate wording can be obtained from the Head of ICT and Procurement);
- (ix) provide for the payment of liquidated damages by the contractor where appropriate e.g. where it fails to perform or complete the contract within the time specified. The amount of such damages must be calculated from a genuine estimate of the likely loss arising from the failure (but may also include administrative costs and overheads) since penalties are unlawful and will not be enforced by the court. This means that using an arbitrary or standard sum for failures of differing importance and loss may be challengeable and should be avoided. Advice should be sought from the Head of ICT and Procurement as necessary.
- (x) state that save where required to do so by law, the Contractor shall not assign, novate or transfer the whole or any part of the contract without the prior written consent of the Council; such consent shall not be unreasonably withheld or delayed however, it may be given subject to conditions.”
- (xi) set out the length of the contract and whether any option to extend the contract is included e.g. a 3-year contract with options to extend for 2 further years if the council elects. N.B Where the Responsible Officer wishes to extend a contract despite no provision to extend being included in the contract then this will be possible only in certain circumstances – see under ‘Extensions’ below.

- (xii) state whether sub-contracting is permitted in whole or in part and, if it is, then state that a contractor cannot sub-contract the whole or any part of the contract without the prior written permission of the appropriate Responsible Officer. N.B normally satisfactory references and health and safety policies and procedures would need to be received before such consent would be granted. In addition, where a Responsible Officer wishes to use a Nominated Sub-Contractor and/or a Nominated Supplier then advice should be sought from the Head of ICT and Procurement.
- (xiii) where staff are transferring out of or into the authority or may transfer into the authority at a later date, the contract must include such conditions as may be necessary to deal with the provision of workforce information etc relating to TUPE/the Code of Practice and/or an indemnity to protect the Council from subsequent legal action consequent upon such transfers. Advice on suitable clauses should be sought from the Head of ICT and Procurement.

9.5 Instructions to Tenderers

- (a) Appropriate Instructions need to be included in the tender documents so contractors are clear about what information they need to provide when submitting quotation and tenders and the rules they must comply with to submit a valid one. Again, lower value/lower risk contracts may need fewer instructions but those set out below are likely to be a minimum in most cases.
- (b) 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 (usually 90 days) – this allows time for tenders to be evaluated and further clarification sought if necessary before the tender ‘offer’ expires. N.B it is also advisable to state that at the expiry of this time the tender offer will not lapse until the tenderer has give written notice to the Council to accept it or it will lapse;
 - iii. That tenders must be signed and submitted on the form of tender provided, without qualification (unless this has been explicitly permitted) and then returned direct to the Responsible Officer indicated on the tender documents before the closing date specified. The instructions should also advise where any written queries or requests should be addressed and the last date for the acceptance of such queries (normally 6 working days before the closing date);

- iv. That tenders must be returned in the Council envelope provided which shall bear the word 'Tender' or 'Quotation' followed by the subject matter to which the tender/quotation relates and the name of the appropriate Responsible Officer concerned; must be securely sealed and bear no other name or mark identifying the tenderer or be delivered with or seen to be accompanied by any material indicating the identity of the tenderer;
- v. The requirement that the tenderer will not disclose any information about to its tender to any other party both prior to submitting it and during the period it is held open for acceptance. That the Council may automatically exclude tenderers from participation in a bid if the tenderer is found to have breached competition law (see General Points above re possible discretion on this point).
- vi. The criteria for evaluation of the tenders. N.B see below under 'Evaluation of Tenders' for further guidance on this aspect.
- vii. That the Council does not bind themselves to accept the lowest or any tender and will not be responsible for, or pay or reimbursement the tenderer for any expenses, costs, fees etc incurred by the tenderer or in any way related to the preparation or submission of the tender;
- viii. Late tenders will not be opened or considered and any late tenders or those disqualified for some other reason should be passed to the Head of ICT and Procurement. Where in exceptional circumstances a Responsible Officers wishes to include in the Instructions to Tenderers a provision allowing late tenders to be accepted, then advice must first be sought from the Head of ICT and Procurement.

9.6 Action during the tender period

- (a) Officers may be privy to confidential information both concerning the external applicants/tenderers (and the in-house service if they are tendering). It is important to maintain absolute discretion and confidentiality concerning the procurement process e.g. by not mentioning who has or has not submitted a tender or expressed interest in doing so, the details of tender or pricing submissions; whether someone had a good/bad reference etc. All sensitive contractor information should be kept secure and access restricted to those officers who really need it.
- (b) A tenderer may raise queries or require further information during the tender process and to ensure there is no confusion or later dispute it is preferable to ask all applicants/tenderers to put such requests in writing. As any contact with applicants/tenderers is potentially important it is good

practice to record contacts in sufficient detail to keep an adequate record – these contacts should be signed, timed and dated.

- (c) It is important that queries and information requests are dealt with promptly and replies sent 1st class and/or faxed as appropriate especially where there is a short closing date.
- (d) All applicants/tenderers must be treated equally and all tenderers must receive the same level of information and detail. Where a query is raised or a request is made by one applicant/tenderer it should be answered and copies of the query and reply sent to all other applicants/tenderers. Anonymity should be preserved at all times by removing name/address and any other identifying references.
- (e) Correspondence to applicant/tenderers should be numbered sequentially so an easy reference can be made e.g. Contract Reference Letter no.1/2/3/4 etc as these letters may need to be incorporated into the contract when it is formalised.
- (f) Where it is necessary to arrange for tenderers to visit offices, depots etc it is important to ensure that this does not become an opportunity to 'push' for extra information. It is best practice for the agenda for the visit to be fixed beforehand and the visiting applicant/tenderers advised that any queries should be made in writing or faxed on return so that full information can be given to all invitees.
- (g) Similarly, where tenderers are invited to attend a group briefing session steps should be taken to ensure this does not encourage collusive tendering e.g. by requiring attendees to sign a non-collusion declaration or by giving individual or written briefings instead.
- (h) Whenever the Council needs to make alterations to tender documents sent to tenderers, all tenderers shall be informed of the same change and where possible the reasons for the change should be given. It is advisable to state in the tender documents that the council reserves the right to make minor changes of a drafting nature or to correct errors without prior reference to the tenderer.

9.7 Receipt, Storage and Opening of Tenders

- (a) All tenders submitted in accordance with these Rules should remain unopened in suitable, secure storage arranged by the Responsible Officer (or an officer designated by him/her) until the time appointed for their

- opening. Any officer receiving a tender shall indicate on the envelope the date and time of its receipt.
- (b) Any tenders received late are to be marked as such and then dealt with as provided for in the relevant tender document – see under ‘Instructions for Tenderers’ above.
 - (c) All quotations/tenders shall be opened at the same time in the presence of the Responsible Officer (or other officer delegated by the Head of Service) and one other senior member of the relevant service. Where the contract value exceeds EC Rules then a Member of Legal Services or Audit should also be present at the opening.
 - (d) The key pricing information from each opened quotation/tender must be recorded on the appropriate form and then signed and timed and dated by the officers undertaking the opening. In the case of civil engineering tenders, a copy of the tender summary originally submitted by each tenderers shall be retained and held on the contracts file for that project too.
 - (e) The Responsible Officer should then arrange for the tenders to be checked so that any obvious qualifications, errors or omissions are identified and appropriate action taken in line with the tender instructions.

9.8 Errors and Qualified Tenders

- (a) Where examination of a tender reveals errors or discrepancies which would affect the pricing or other figure submitted by that tenderer, then the relevant tenderer should 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.
- (b) If the tenderer withdraws, the next selected tender which satisfies arithmetical and technical checks and which would have been capable of acceptance by the Responsible Officer (i.e. is either the lowest price or the Most Economically Advantageous Tender (MEAT) – see below - if that evaluation criteria is used) shall be accepted and the circumstances reported to the Head of ICT and Procurement for information.
- (c) In civil engineering contracts, the tender figure shall be deemed to be the sum of the rates submitted in the tender unless otherwise indicated.

9.9 Evaluation of Tenders

- (a) There are 2 types of evaluation and award processes: -

- (i) Lowest price – this is appropriate when the procurement is for standard goods – particularly goods where quality and other aspects can be easily specified e.g. textbooks and where, therefore, price is the only determining factor.
 - (ii) The ‘Most Economical Advantageous Tender’ (MEAT) – this should be used in all cases where factors other than price are to be used as criteria and so other factors such as technical ability, responsiveness, quality assurance measures, environmental credentials etc are as or more important.
- (b) Each procurement activity will turn on different factors and so the Responsible Officer should consider, carefully, which criteria are the most important for the procurement in question. The chosen criteria must be set out in the tender document along with details of the information or evidence the tenderer needs to provide so that these aspects of its tender can be evaluated.
 - (c) It is common for the non-price criteria to be gathered by asking the tenderer to submit of method statement(s) on how the contract will be performed (ideally with the minimum standard to be achieved set out) but other non-discriminatory ways of gathering the necessary information/evidence is acceptable. Examples of Method Statements can be obtained from the Head of ICT and Procurement.
 - (d) The evaluation must clearly indicate, in the tender document, the relative weighting of the criteria so that each tenderer is aware of the relative importance of each criterion and can ensure its tender is focused on the matters deemed most important to the Council.
 - (e) Ideally, an evaluation team comprising different skills should assess each of the tenders, particularly where non-price criteria are used. Each team member can then examine each tender against the criteria and form an assessment of how well or badly it meets the stated criteria. Where opinions differ on a particular tender then a discussion amongst the team of the differences can take place until a consensus is reached. A report of the evaluation and reasons for the assessments should be made at the time of the assessment ready for any subsequent challenges. The assessment should conclude with identifying the chosen tender according to the award process chosen (either Lowest Price or MEAT).
 - (f) Where the Responsible Officer, following the consideration of the evaluation report, decides that the “Most Economically Advantageous Tender” or “Lowest Price” tender is not satisfactory, then advice should be sought from the Head of ICT and Procurement.

- (g) In considering the tenders, the Responsible Officer may seek advice from Legal Services, Financial Services or other appropriate technical officers e.g. HR, Health and Safety, as necessary.
- (h) Advice should be sought from the Head of ICT and Procurement if there are any queries or further advice is needed.

9.10 Award of Contract

- (a) A tender may be accepted by the Responsible Officer provided the following apply; -
 - i. The tender is the Lowest Price or “Most Economical Advantageous Tender” according to the predetermined criteria **and**;
 - ii. The tender figure is within the approved sum allocated in the revenue budget or capital Programme;
- (b) Where the most competitive tender is outside the approved estimate provision the officer must seek advice from the Head of ICT and Procurement. If it is outside of the budgeted provision a report must be made to the District Executive requesting an increase in the estimate provision.
- (c) If the Responsible Officer accepts a tender above the sum allocated against the advice of the Head of Finance, the acceptance shall automatically be placed on hold and referred to the next meeting of the District Executive for decision.
- (d) Subject to (a) to (c) above it is acceptable for the successful tenderer to be informed orally of their appointment with a written confirmation to follow. Details of the other bids should normally be given in the written confirmation of the award although anonymity must be preserved.
- (e) Advice should be sought from the Head of ICT and Procurement if there are any queries or concerns or if a challenge to the process has been or is likely to be made.

9.11 Post award

- (a) Where the procurement is covered by EC Rules then special requirements will apply concerning contract award notices etc and the need to reply promptly to enquiries post tender from unsuccessful tenderers. Please seek further advice from the Head of ICT and Procurement if this is the case.

- (b) Where the award will result in the transfer into the authority or out of the authority of staff then advice should be sought on from HR or the Head of ICT and Procurement on the processes to be followed
- (c) All the documents forming the contract (plus a copy of the same) should be passed to Legal Services for formalisation of contract together with a list of the key information re price, start and end dates of the contract etc. If a pre contract meeting has been held to clarify any remaining issues and an addendum to the contract has been prepared this should be included in the documents sent for formalization.
- (d) Once the process has been completed then the Responsible Officer must ensure that all the necessary details, in respect of that contract, are entered onto the Contracts Register, held by Support Services. This will avoid delays occurring when contract certificates are submitted for payment and also meets audit requirements.
- (e) Legal Services will send a copy of the formalised documents to the Responsible Officer and the master copy will be held in the Deed Room in Legal Services. The Council's Document Retention Policy should be applied to the review and destruction of the procurement and contract documents.
- (f) Financial Services should be informed in writing (email acceptable) of the value of the new contract as compared to the previous contract if any for budgetary purposes and to enable an assessment of whether the procurement has given 'value for money' to be made.

9.12 Contract Extensions

- (a) For any contract below EC limits the contract period may be extended in accordance with its contract terms and Responsible Officers may wish to build into the initial contract some extension options. As a matter of good practice the sum of the contract period extensions should not exceed the initial contract period.
- (b) All contracts period subject to EC Rules can only be extended in line with the original OJEU notice and the EC rules prevailing at the time and so the advice of the Head of ICT and Procurement should be sought where a contract period extension is necessary. Unless there is Management Board approval to the contrary the existing contract may be extended once only and no further extension will be permitted where a contract has previously been extended.

- (c) In any event, the extension must be carried out either at or before the conclusion of the existing contract.
- (d) In addition, it may be possible for the scope of a contract to be extended so that additional goods, services or works are added to those originally included in the contract. This will usually be acceptable provided that:
 - (i) the new contract is of a similar nature to the existing contract and;
 - (ii) the extension does not exceed 50% of the value of the existing contract;
 - (iii) where a contract extension (not provided for by the contract itself) is required and the estimated value is greater than £10,000 but not more than £50,000 then an extension may be granted providing the prior approval of the relevant Portfolio Holder (or the prior approval of the District Executive should the Portfolio Holder so decide) has been given. Any extension that is estimated to be greater than £50,000 is subject to the prior approval of the District Executive.

10. Special types of Procurement

10.1 ConstructionLine

- (a) All construction and civil engineering works should be procured through Constructionline. Further Information on ConstructionLine is available from the Head of ICT and Procurement. Where it is used the following procedure should be followed.
- (b) Tenders should be invited from a minimum of six contractors selected by the appropriate Head of Service from the "Constructionline" Register of Qualified Construction Services. Such contractors must also meet CHAS compliance in relation to their Health and Safety Policy and Procedures,
- (c) At least one of the contractors selected shall be a local contractor where this is lawful and appropriate. It may be advisable for the relevant Head of Service to check that the chosen contractors is able and willing to tender before formally inviting them to tender for a contract;
- (d) Normally the 3 contractors who submitted the lowest quotations/tender for the last contract of a similar type or value should be invited to tender along with the next 3 contractors listed in the relevant category;
- (e) Where, for some reason the Responsible Officer does not wish to select the contractors to be invited by the method set out in (c) above then s/he shall agree the criteria to be used to select the contractors to be invited to tender

with the appropriate Head of Service, the Head of Legal & Democratic Services and the Head of Finance. Reasons for not using the method set out in (c) shall be recorded for audit purposes.

10.2 Using other Council's/Public Bodies' Contracts

- (a) See under Framework Arrangements below

10.3 Partnership arrangements

- (a) A partnership arrangement is nevertheless a contract (but see (d) below) and so the selection of a partner for the provision of services or on a construction project must still be compliant with these Rules.
- (b) At all stages of the procurement process the desired partnership arrangement and how it is planned to operate should be set out. The design of the procurement process and selection and evaluation of criteria for choosing the partner should support the desired arrangements and selection would normally be on the basis of Most Economically Advantageous Tender (see above under Evaluation)
- (c) Guidance on approval of partnerships is included under the Financial Procedure Rules and Guidance on Partnerships is available on InSite.
- (d) Some partnerships are not contractual and therefore not legally binding e.g. where there is only a 'Memorandum of Understanding' or 'Terms of Reference' underpinning the arrangement. Such partnerships are out side of these Rules although advice on such arrangements is available as per (c) above.

10.4 Shared services

- (a) These are a form of partnership and, as they would normally be contractual, any proposals must first be submitted to Management Board for approval. Again further advice is available under the Financial Procedure Rules and through Partnership Working at SSDC on InSite.

10.5 Framework Agreements

- (a) Framework agreements are used where the Council wishes to contract for the provision of goods, services or works without conducting a new procurement exercise each time it places an order. It is most appropriate to be used where it is not clear, in advance, the quantity or type of goods, services or works needed.

- (b) There are 2 types of framework arrangements. In each case every time an order is placed a new contract arises based on the terms set out in the framework.
 - (i) Where the Council selects a number of contractors as approved contractors to provide the goods, services or works in question. In this case a mini tendering exercise takes place each time an order is to be placed and each of the contractor's appointed will submit a bid. The evaluation of the bid will be on the same basis as the selection of the bidders. This arrangement has been used for the purchase of leased cars.
 - (ii) Where one or more contractor is appointed and will have supplied indicative prices/information so that it is possible to check which contractor is most competitive when an order needs to be placed. This type of arrangement has been used for the purchase of IT equipment and public works maintenance.
- (c) In addition, the Council is able to use not only those Frameworks it has entered itself but also those procured by central Government agencies, other authorities or public bodies or purchasing consortia provided it is a named beneficiary (by name, class or implication) e.g. the Consortium. Where the Council has entered into a framework agreement then that Framework Agreement should be used unless it does not offer Best Value.
- (d) As the use of Frameworks can be quite complex the Head of ICT and Procurement must approve the use of any framework agreements.

10.6 Appointment of consultants

- (a) 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 follow the Rules under the appropriate transactional limits outlined above. In addition, detailed briefs outlining expected outcomes and SMART targets must be produced to ensure clarity of scope and expectations and the subsequent delivery of the outcomes.
- (b) Each such engagement:
 - shall be evidenced in writing, including details of the basis and frequency of payments identifying the Responsible Officer who will manage and monitor each consultancy project;

- shall be subject to the condition that such architect, engineer, surveyor or other consultant shall at all times be fully covered by sufficient and suitable professional indemnity insurance. Advice on insurance matters should be obtained from Financial Services.
 - shall require that s/he shall conform to the requirements of these Rules, the Council's Financial Procedure Rules and any direction from the Council;
 - shall require that s/he shall on request, at any time during the carrying out of the contract, produce to the Responsible Officer or her/his representative, all the records (including electronic records) maintained by her/him in relation to the contract and upon completion or earlier termination of the contract, s/he shall pass, promptly, all such records to the appropriate Head of Service. In the case of electronic records these shall be in a machine-readable format appropriate to the Council's IT system.
- (c) The Responsible Officer should ensure that all the benefit of the intellectual property rights in the work that the consultant has undertaken, whilst undertaking the brief, remain with the Council and that access to and all copies of such research or work is freely and easily accessible by the Council.
- (d) The Responsible Officer must consider which will be the most appropriate evaluation criteria and whether the appointment will be on the basis of Lowest Price or the Most Economically Advantageous Tender – see above re Evaluation Criteria. In most cases, the latter will be more appropriate as it is expertise and skill that will be the main determinants of appointment not just price.
- (e) Where MEAT is chosen the Responsible Officer must clearly identify in advance the key requirements for the appointment so prospective consultants can be asked to demonstrate that they meet these during the evaluation.
- (f) A record of the evaluation should be kept for audit purposes

11. Disposing of surplus goods

- (a) The Rules for disposal of surplus goods are included within the Financial Procedure Rules.

12. Glossary of Terms

“Procurement” or “Contract” means the process for choosing the contractor(s) to provide the goods, services or works in question and the legal document setting out the legally binding agreement depending upon the context in which the term is used.

“Tendering” or “Quotation” means the contractor’s offer (usually financial) to undertake the procurement/contract

“Responsible 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 M.E.A.T which is used in EC Rules as a contract award criterion

“M.E.A.T” Most Economically Advantageous Tender – means a tender selection based on factors other than price

“Council” means South Somerset District Council

“Contractor” means any person or body providing, or seeking to provide, goods services or works to the Council.

“EC Rules” means the European Union rules on Public Procurement including the Directives .

“Framework agreement” An agreement that allows the Council to call-off from a supplier, a range of predefined goods or services. It is 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 a strategic direction. A list of CLAN members is available from the Head of ICT and Procurement.

“SMART” Agreed targets when deciding the form of a contract – this consists of Specific, Measurable, Achievable, Realistic, and Timebound.