

# South Somerset District Council

*Notice of Meeting*

## South Somerset District Council



*Making a difference where it counts*

### Thursday 9<sup>th</sup> December 2010

### 7.30 p.m.

**Council Chamber  
Council Offices  
Brympton Way  
Yeovil  
Somerset BA20 2HT**

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The public and press are welcome to attend.

If you would like any further information on the items to be discussed, please ring the Agenda Co-ordinator, **Angela Cox** on Yeovil (01935) 462462  
email: [angela.cox@southsomerset.gov.uk](mailto:angela.cox@southsomerset.gov.uk), website: [www.southsomerset.gov.uk](http://www.southsomerset.gov.uk)

This Agenda was issued on Wednesday 1<sup>st</sup> December 2010

**Ian Clarke**, Assistant Director (*Legal and Corporate Services*)



**2007-2008**  
*Neighbourhood and  
Community Champions:  
The Role of Elected Members*

**2006-2007**  
*Improving Rural Services  
Empowering Communities*

**2005-2006**  
*Getting Closer to Communities*

**If you need this information in large print,  
Braille, audio or another language,  
please contact 01935 462203**



INVESTOR IN PEOPLE

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## Council Membership

**Chairman:** Ian Martin  
**Vice-Chairman** Roy Mills

Cathy Bakewell	Anna Groskop	Paul Robathan
Jill Beale	Peter Gubbins	Roslynn Roderigo
Mike Beech	John Hann	Keith Ronaldson
Simon Bending	Henry Hobhouse	Jo Roundell Greene
Michael Best	Tim Inglefield	Sylvia Seal
Lesley Boucher	Andrew Kendall	Peter Seib
Dave Bulmer	Ruth Kendall	Dan Shortland
John Calvert	Jenny Kenton	Angie Singleton
Ann Campbell	Michael Lewis	Alan Smith
Tony Carvin	Tony Lock	Sue Steele
Tony Capozzoli	Pat Martin	Kim Turner
Tim Carroll	Nigel Mermagen	Andrew Turpin
John Vincent Chainey	Robin Munday	Linda Vjeh
Geoff Clarke	Derek Nelson	Martin Wale
Rupert Cox	Ric Pallister	Lucinda Wallace
John Crossley	Patrick Palmer	William Wallace
Tony Fife	Tom Parsley	Colin Winder
Julian Freke	David Recardo	Derek Yeomans
Carol Goodall	John Richardson	
Dave Greene	Peter Roake	

## Information for the Public

The meetings of the full Council, comprising all 60 members of South Somerset District Council, are held at least 6 times a year. The full Council approves the Council's budget and the major policies which comprise the Council's policy framework. Other decisions which the full Council has to take include appointing the Leader of the Council, members of the District Executive, other Council Committees and approving the Council's Consultation (which details how the Council works including the scheme allocating decisions and Council functions to committees and officers).

Members of the Public are able to:-

- attend meetings of the Council and its committees such as Area Committees, District Executive, except where, for example, personal or confidential matters are being discussed;
- speak at Area Committees, District Executive and Council meetings;
- see reports and background papers, and any record of decisions made by the Council and Executive;
- find out, from the Executive Forward Plan, what major decisions are to be decided by the District Executive.

Meetings of the Council are scheduled to be held monthly at 7.30 p.m. on the third Thursday of the month in the Council Offices, Brympton Way although some dates are only reserve dates and may not be needed.

The agenda, minutes and the timetable for council meetings are published on the Council's website – [www.southsomerset.gov.uk](http://www.southsomerset.gov.uk).

The Council's Constitution is also on the web site and available for inspection in Council offices.

The Council's corporate aims which guide the work of the Council are set out below.

Further information can be obtained by contacting the agenda co-ordinator named on the front page.

### South Somerset District Council – Corporate Aims

**Our key aims are:** (all equal)

- To deliver well managed cost effective services valued by our customers
- To increase economic vitality and prosperity
- To improve the housing, health and well-being of our citizens
- To ensure safe, sustainable and cohesive communities
- To enhance the environment, address and adapt to climate change

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# South Somerset District Council

Thursday 9<sup>th</sup> December 2010

## Agenda

### 1. Apologies for Absence

### 2. Minutes

To approve and sign the minutes of the previous meeting held on Thursday, 18<sup>th</sup> November 2010.

### 3. Declarations of Interest

In accordance with the Council's Code of Conduct, which includes all the provisions of the statutory Model Code of Conduct, Members are asked to declare any personal interests (and whether or not such an interest is "prejudicial") in any matter on the agenda for this meeting. A personal interest is defined in paragraph 8 of the Code and a prejudicial interest is defined in paragraph 10.

### 4. Public Question Time

### 5. Chairman's Announcements

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## 6. Chairman's Engagements

### Friday 19th November

At the invitation of the Yeovil Trinity Foyer Ian and Pat attended the celebration of the achievements of their young people and to mark the Foyer's 14th birthday.

In the evening Ian and Pat attended the Bright Sparks' performance of 'It's a Small World' at the invitation of Girlguiding Yeovil Division and the "treasures of the Earth Exhibition at the Museum of South Somerset.

### Tuesday 23rd November

Ian and Pat attended the Yeovil Transport Collectors Fair at the invitation of the Birchfield Residents' Association.

In the evening, at the invitation of the Somerset & Dorset Branch of The Marine Society and Sea Cadets, Ian attended a presentation on 'The Royal Navy – Today and Tomorrow' at RNAS Yeovilton.

Roy attended the Annual General Meeting of the Midwest European Communities Association at the invitation of their Chairman, held at the Yeovil Day Centre.

### Thursday 25th November

At the invitation of Somerset Rural Youth Project Roy attended Young People's Celebration and AGM, which will include Young People's Awards, live music and buffet.

In the evening Ian and Pat attended the Yeovil's Christmas Switch-On at the invitation of the Yeovil Town Centre Manager.

### Friday 26th November

Ian and Pat attended the launch of South Somerset CAB Macmillan Welfare Benefits Service, which is a partnership project between SSDC and CAB.

In the evening Ian and Pat then attended the Yeovil Mayor's Ball, held at Westland's Leisure Centre, which was being held to raise funds for St Margaret's Hospice and the Yeovil Night Shelter.

### Saturday 27th November

In the morning, Ian and Pat attended the Wincanton Community Hospital Coffee Morning.

In the afternoon, Ian and Pat attended a Christmas Dinner held at St Peter's Church Hall, Yeovil at the invitation of St Peter's Luncheon Club.

In the evening Ian and Pat then attended the annual Social evening at the Old Barn Club at the invitation of the Yeovil & District Branch of Leukaemia & Lymphoma Research.

### Sunday 28th November

At the invitation of St Margaret's Hospice Ian and Pat attended the annual 'Light up a Life' service at St John's Church, Yeovil.

### Monday 29th November

Ian and Pat attended the Memorial Service for the late Councillor Colin Kay, former Chairman of North Dorset District Council.

In the evening Ian attended the Somerset NFU Annual Open Meeting, held at Dillington House, Ilminster.

**Wednesday 1st December**

Roy attended the Accessible Somerset Awards Ceremony at the invitation of Compass Disability Services, held at their headquarters in Taunton.

**Thursday 2nd December**

Ian and Pat are due to attend Lark Community Association's Christmas Raffle at the invitation of Jacqui Cousins.

**Friday 3rd December**

At the invitation of the SSDC's Octagon Markets Team, Ian and Pat are due to attend the SomerZest Christmas Fair, held at the Octagon Theatre.

**Saturday 4th December**

Ian and Pat are due to attend the official opening of the Seavington Village Store and Café at the invitation of the Chairman of the Seavington Community Shop & Services Association.

In the evening Ian and Pat are then due to attend the Civic Player's production of 'Cards on the Table', held at the Swan Theatre, Yeovil.

**Sunday 5<sup>th</sup> December**

Ian and Pat are due to attend the Gillian Cliffe Junior Singing Group's concert at the Dance Studio in Yeovil.

**Monday 6<sup>th</sup> December**

At the invitation of the Chairman of Somerset County Council, Ian and Pat are due to attend the County Carol Service at Wells Cathedral.

**Tuesday 7<sup>th</sup> December**

Ian and Pat are due to attend the Yeovil Music Centre Christmas Concert at Bucklers Mead School.

**Wednesday 8<sup>th</sup> December**

In the morning, Ian and Pat are due to attend the South Somerset Disability Forum Christmas Fair, at the invitation of the Management Committee.

In the evening Ian and Pat are due to attend the Chilton Cantelo Prep School's Christmas Play, "The Late Wise Man".

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## 7. Joint Working Update

*Lead Officer:* Mark Williams, Chief Executive  
*Contact Details:* Mark.williams@southsomerset.gov.uk or (01935) 462101

### Purpose of the Report

To inform Members of the outcome of recent discussions between SSDC and EDDC Members and a proposal to vary the approach adopted hitherto regarding the sharing of services and exploiting the resulting financial benefits.

This report is due to be discussed by District Executive on 2<sup>nd</sup> December and the outcome of that discussion will be circulated under separate cover.

### Public Interest

South Somerset District Council and East Devon District Council have entered into a partnership agreement to maintain and preserve the quality and extent of public services amid future projected Government funding cuts. The Joint Integration Committee (JIC) have been looking at the possibilities of a shared management team, procurement arrangements and sharing specialist posts within the partnership between the two authorities to achieve budget savings.

### Recommendations

That full Council agree:-

1. to note that there will be no further meetings of the Joint Integration Committee at the present time.
2. to note that both EDDC and SSDC will continue with the Strategic Alliance but on a more evolutionary basis than a programmed approach.
3. to agree that proposals and business plans for further sharing will be agreed by respective Executive Committees rather than the Joint Integration Committee until such time as both Councils agree the JIC should be reconvened.
4. to agree that joint initiatives around procurement, Audit services, ICT software and Infrastructure and Insurance etc. continue to be explored for future savings.
5. to note that due to the financial pressures on both authorities, work on the Lean programme at South Somerset continues to ensure teams are the most efficient they could be, before returning to the consideration of sharing arrangements.

### Background

At its meeting in February 2010 the Council adopted a recommendation from District Executive that formal working in partnership with East Devon District Council be agreed as from April 2010. Since that meeting, a Joint Integration Committee, comprising of 5

Councillors from each Authority has met and are working towards achieving budget savings through a shared management team, procurement arrangements and specialist posts within the partnership.

## **Report Detail**

Following discussions with Portfolio Holders, Group Leaders and senior Councillors of East Devon District Council, it has been proposed that Phase 2 of joint working with East Devon be paused until such time as both Councils agree the Joint Integration Committee should be reconvened.

It is felt that further, significant savings could be made through the Lean programme here at SSDC (and Systems Thinking programme at East Devon) to ensure teams at both councils are the most efficient they could be, before returning to the consideration of sharing arrangements.

The Joint Integration Committee meeting of 28<sup>th</sup> October was only cancelled in consultation with and agreement from East Devon DC and it is now proposed to suspend further meetings of the Joint Integration Committee.

Members had expressed some reservations and concerns over the contents of the Phase 2 Senior Management Restructure paper, to be presented at the JIC meeting of 28<sup>th</sup> October, principally over some of the financial aspects and also because further amendments were needed to the recommendations which would have been tabled on the day of the meeting.

Following the publication of the Government's Comprehensive Spending Review, SSDC now has the first indicators of its budget for the next 4 years. The savings required will be a challenge. Principally for that reason, SSDC need to review the whole array of savings again and prioritise them in terms of timing, as it would appear that the most severe effect will be next year 2011/12. Therefore, it proposed that the timing of the joint senior management restructure be deferred, to maintain capacity whilst these changes are made.

The partnership with East Devon is in existence and continues as there is no suggestion at this time that SSDC rescind what is already in place in Phase 1, bringing in a saving of £96,000 per annum. What is being suggested is a pause to Phase 2 implementation.

It would be short-sighted however not to continue with initiatives that will deliver savings such as joint procurement around Audit services, ICT software and Infrastructure and Insurance etc. It is also envisaged that we will continue with the sharing of some officers where there is clear financial advantage to SSDC, for example, continuing with the Chief Executive and there will very likely be some specialist officers where a saving can be realised by both partners. SSDC will of course continue to share with other councils where this also delivers suitable savings. Over the next 4 years the pressure to make savings through sharing will continue.

## **Financial Implications**

There are no associated financial implications at the current time.

The savings proposed by joint working with EDDC have been found from within existing budgets for 2011/12. Work will continue in future years in line with the Medium Term Financial Plan.



## Corporate Priority Implications

Corporate Aim 5: Deliver well managed, cost effective services valued by our customers.

## Carbon Emissions and Adapting to Climate Change Implications (NI188)

None directly from this report other than the encouragement to officers and Councillors to car-share during travel to meetings.

## Equality and Diversity Implications

SSDC is committed to considering the equality and diversity implications of all its recommendations to District Executive and Council. All meeting venues are fully accessible to the public.

**Background Papers:** *Joint Integration Committee Agenda and Minutes of 8 April, 13 May, 17 June, 9 September 2010.*

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## 8. Changes to Redundancy and Severance Pay Policy

Lead Officer: Mike Holliday, HR Manager

Contact Details: Mike.holliday@southsomerset.gov.uk or (01935) 462161

### Purpose of the Report

To recommend a change to the current SSDC Redundancy and Severance Pay Policy with a move to a single common SSDC multiplier rate of 2.5 in all cases of redundancy payment and to reduce pay protection when alternative employment is taken at a lower grade from 3 years to 2 years.

### Public Interest

The purpose of the report is to recommend changes to the way redundancy payments are calculated to bring the SSDC policy closer in line with other local authorities in the South West and to have a common level of compensation payment for both voluntary and compulsory redundancies.

### Recommendation(s)

That Council agree:-

1. That a single SSDC redundancy multiplier of 2.5 be introduced for both voluntary and compulsory redundancy payments moving from the current SSDC multipliers of 3.46 for compulsory redundancy and 2.46 for voluntary redundancy.
2. to reduce pay protection from 3 years to 2 years in circumstances where suitable alternative employment at a lower grade is offered to an employee following the deletion of their post.
3. That should the changes be agreed then there would be no further reviews to the multiplier until after 1<sup>st</sup> January 2013.

### Background

Since the approval of the current Redundancy and Severance Pay Policy by Council in 2007 there has been a major change in the financial climate. As a result most other Councils in the South West have or are seeking to change redundancy terms (see Appendix A – summary of redundancy the multipliers at other south west councils). Our policy is now out of line with redundancy terms elsewhere and with frontline services under threat it is no longer affordable or acceptable for current redundancy payment levels to be retained.

In a sample of 23 other South West authorities, 70 per cent had multipliers of 2.2 or under, so the proposed figure of 2.5, whilst a reduction for compulsory redundancies, would remain to be one of the more generous figures in the region.

This report is due to be discussed by District Executive on 2<sup>nd</sup> December and the outcome of that discussion will be circulated under separate cover.

## Report

The suggested multiplier has been set to try to achieve a balance between being reasonable to staff that lose their post through redundancy, to provide a multiplier that will continue to attract voluntary redundancy requests as the organisation downsizes while also reducing the potential for unacceptable payments to some staff the cost of which could jeopardise other posts or services.

The table in Appendix A illustrates how the SSSC redundancy multipliers would be applied if the recommendations were accepted.

It is be recognised that the recommended multiplier is still on the more generous side compared to those applied elsewhere both in the public and private sectors but it is also recognised that it could be considered to be 'unfair' to reduce the multiplier rates that had previously been acceptable immediately before a cost reduction programme is started that is likely to result in redundancies.

A multiplier of 2.5 would set a maximum redundancy payment cap of 75 weeks salary compared to the possible maximum of 103.8 weeks under the current policy.

An additional advantage that a single multiplier for all redundancy situations brings is that that it would prevent the current dilemma for staff as to whether they should refrain from making a voluntary redundancy application in the hope that a compulsory redundancy situation will arise that would result in a higher redundancy payment. From the organisations point of view it is far better to know an employees real preference at the earliest time and have a voluntary redundancy then have a time consuming and protracted redundancy selection process that creates stress for other staff caught up in the process and creates a distraction from the main purpose of business.

Again the move to two years pay protection following an offer of alternative employment at a lower grade is to recognise the current financial position but also provides a reasonable period of adjustment to any member of staff that faces a salary reduction through circumstances that are not of their own making.

Consultation has taken place with recognised Union Representatives on these changes and the ballots of their members resulted in a majority of those voting being in favour of the changes at the levels proposed.

## Financial Implications

It would reduce compulsory redundancy payments by 28% reducing the risk of high payments to staff leaving on compulsory redundancy but will increase voluntary redundancy payments by 1.6%.

## Corporate Priority Implications

Deliver well managed and cost effective services valued by our customers.

## Carbon Emissions & Adapting to Climate Change Implications (NI188)

None

## Equality and Diversity Implications

As redundancy payments are calculated based on age, service length and weekly salary then older staff with long service and higher weekly salaries will receive the higher payments. The SSDC multiplier does not discriminate on age grounds. The statutory redundancy tables provide for greater redundancy payments for service served over the age of 41 years. These changes would have no impact on the posts that are selected for redundancy and the multipliers would be applied equally to all staff in a redundancy situation.

**Background Papers:** *Appendix A: Table showing proposed application of multiplier.*

*Appendix B: List of redundancy multipliers at other South West Authorities*

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## Appendix A

### Summary of Severance Payments

	<b>Redundancy Payment</b>	<b>Compensation Payment</b>	<b>Pay in lieu of notice / Work notice</b>
Compulsory Redundancy	2.5 x statutory redundancy calculation*	N/a	Yes
<b>Voluntary Redundancy</b>	2.5 x statutory redundancy calculation*	N/a	Yes
<b>Voluntary Retirement 'Efficiency of service'</b>	N/a	1 x statutory redundancy calculation*	No
<b>Early Retirement</b>	N/a	None	No

\* Calculation to use actual weekly pay. (Current statutory maximum payment is £380 per week).

NB

Redundancy payments up to £30,000 can normally be paid tax free.  
Compensation payments are subject to tax.

## Appendix B



SOUTH WEST EMPLOYERS

### Survey Results Re Redundancy (Feb 2010, updated July/August 2010)

- When calculating redundancy payments, does your authority base this on:
  - Actual weekly pay?
  - Weekly pay capped at the statutory rate of £380 per week?
  - Some other amount?
- Having calculated the number of weeks x weekly pay, does your authority then apply a multiplier to this amount to arrive at the final payment? If so, what is the value of this multiplier?

## Responses

	<b>Basis of A Week's Pay</b>	<b>Multiplier</b>
<b>Unitary 1 South Gloucestershire</b>	Actual pay	2
<b>Unitary 2 Plymouth City</b>	Actual, capped at twice statutory rate (currently £760)	No
<b>Unitary 3 B&amp;NES</b>	Actual pay	2
<b>Unitary 4 Bristol</b>	Actual pay	2
<b>Unitary 5 Cornwall</b>	Actual pay	1.75 Teachers = 2
<b>Unitary 6 Wiltshire</b>	Actual pay	4 (maximum 2 years' pay)
<b>Unitary 7 North Somerset</b>	School staff: capped at statutory amount (£380 per week)  Other staff: Actual pay	School staff: payment is statutory amount only.  Other staff: 2
<b>County 1 Somerset</b>	Actual pay	2 (looking to reduce to 1)
<b>County 2 Gloucestershire</b>	Actual pay	2.2
<b>County 3 Dorset</b>	Actual pay	2.5  Consultation is taking place regarding reducing this to 1.25
<b>District 1 Christchurch</b>	Actual pay	2.5
<b>District 2 Weymouth</b>	Actual pay	2.2
<b>District 3 West Somerset</b>	Actual pay	3
<b>District 4 East Devon</b>	Actual pay	2.5
<b>District 5 East Dorset</b>	Actual pay	2.5 (discretionary)
<b>District 6 Tewkesbury</b>	Actual pay	2.2

	<b>Basis of A Week's Pay</b>	<b>Multiplier</b>
<b>District 7 North Devon</b>	Actual pay	2.2
<b>District 8 South Somerset</b>	Actual pay	Voluntary = 2.46 Compulsory = 3.46
<b>District 9 West Dorset</b>	Actual pay	2.2
<b>District 10 Gloucester CC</b>	Actual pay	No
<b>District 11 Mendip</b>	Actual pay	Voluntary = 2 Compulsory = 3
<b>District 12 Exeter CC</b>	Actual pay	2
<b>District 13 West Devon</b>	Actual pay	2
<b>District 14 South Hams</b>	Actual pay	3
<b>Other 1 Avon &amp; Som Police</b>	Actual pay	2
<b>Other 2 Devon &amp; Som Fire</b>	Actual pay	Discretionary



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## 9. Amendments to the Procurement Procedure Rules – Recommendations from Audit Committee

*Lead Officer:* Gary Russ, Procurement and Risk Manager  
*Contact Details:* gary.russ@southsomerset.gov.uk or (01935) 462076

### Purpose of the Report

This report introduces amendments to the Procurement Procedure Rules, which are included in this agenda (Appendix A to this report sent under separate cover). The rules were considered by the Audit Committee on 23rd September 2010, which agreed the recommendation to go forward to Full Council.

### Recommendation

The Council is asked to approve the amendments to the Procurement Procedure Rules as at Appendix A to this report (sent under separate cover).

### Background

The Procurement Procedure Rules outline the rules regarding all purchases of goods, services and works by this authority and the accountability of individuals that carry out this function. They are designed to show the clear rules attached to procurement but also act as a guide to assist officers and members with the procurement process. The review of those rules is included within the remit of the Audit Committee under its terms of reference as follows:-

“To consider the effectiveness of SSDC’s risk management arrangements, the control environment and associated anti-fraud and corruption arrangements and seek assurance from management that action has been taken.”

### Revised Procurement Procedure Rules

The attached document shows any revisions/additions to the current approved rules, which were adopted by the Council on 16th July 2009. The need for the amendments has arisen given the experience of officers in using the new rules and will give further clarification for managers and improved procurement controls.

### Report

The Procurement and Risk Manager informed the Audit Committee that although the previous Contract Standing Orders required all purchases made over £10,000 without competition to be presented to the Procurement Officer for approval before proceeding, it was removed under the new Procurement Procedure Rules. This was on the basis that officers would still seek the advice of the Procurement and Risk Manager if required and assumed that each officer had enough knowledge and experience to manage the procurement process. In order to give the Procurement and Risk Manager an overview of the majority of contracting taking place at the council it is recommended that this is amended so that the Procurement and Risk Manager can add vital support especially at post contract award stage.

Since the adoption of the new PPRs the number of consultations with the Procurement and Risk Manager over exemptions or application of the rules has slowly dropped to zero. Unfortunately this has meant that the Procurement and Risk Manager is not aware of the majority of contract activity that is taking place across the council. This could be due to a well-written set of rules and that officers are working well with them and officers are confident enough that they now feel they no longer need to check and consult. However in the current economic climate the Assistant Director (Finance and Corporate Services) along with the Audit Committee have reflected and it is now felt that this is a weakness in our controls. Hence the recommendations contained within this report.

A further control measure being put in place is a push to encourage services to use purchase orders more so that commitments can be seen and so that the Procurement and Risk Manager then has an opportunity to see purchase orders going through the system (keep in mind that these are also contracts).

In summary, whilst it is believed that the new Procurement Procedure Rules have been a great success in enabling staff to manage their procurement, a control weakness may have been exposed in the overall corporate controls for procurement. The changes to the Procurement Procedure Rules being sought via this report will address these issues. Further controls will be added as we deploy electronic tools for officers seeking quotes, tenders and contracts, as these will all be deployed as modules connected with an e.procurement project.

The Procurement Procedure Rules (sent under separate cover) show the revisions in **bold and underlined**.

### **Financial Implications**

There are no financial implications.

***Background Papers: Procurement Procedure Rules***

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## Procurement Procedure Rules

<b>Issue details</b>		
<b>Title:</b>	<b>Procurement Procedure Rules</b>	
<b>Issue and version number:</b>	<b>Final 11/07/08 Version 3 V.3 August 10</b>	
<b>Officer/Panel Controlling Procedure:</b>	<b>Head of Procurement and Support Services</b>	
<b>Authorisation Level:</b>	<b>Management Board/Audit Committee/Full Council</b>	
<b>Authorisation Date:</b>	<b>2008</b>	
<b>Review date:</b>	<b>2010</b>	

# **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 wrongdoing. Following the Rules will give an officer comfort that she/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 Procurement and Support Services**.
- (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 Procurement and Support Services** 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 Procurement and Support Services** 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 Procurement and Support Services** 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. **(Covered by the Council's Community Grants Policy)**
- (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 Procurement and Support Services**.

#### 3.2 Exemptions available automatically

- (a) Tenders shall not be required for the following procurements: -
  - (i) 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 exceeds £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**

#### **IMPORTANT NOTE: -**

**Officers claiming exemption from the rules under any clause under section 3 , must ensure that they have obtained clarification and agreement from the Procurement and Risk Manager prior to proceeding. Failure to do so will be deemed to be a breach of these rules. The exemptions given will be evidenced to Audit committee and they will act as advisors in this regard and advise the Procurement manager if any actions taken concern them.**

- (a) The following exemptions may be given with the written approval of the **Head of Procurement and Support Services** 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 purchases are of patented or proprietary items and any form of tendering would not be appropriate.
  - (iv) **Where best value is more likely to be achieved by approaching one contractor or consultant.**
- (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 **Head of Procurement and Support Services is unavailable to give consent pursuant to 3.3(a) (i) to (iv) above or 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 a 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 Councils 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.
- (f) **Whistleblowing** - all contractors must be given a copy of the Council's Whistleblowing Policy.
- (g) **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 Procurement and Support Services** can give advice on how these aspects may be incorporated into the procurement process.
- (h) **Insurance** - For all contracts, Responsible Officers should assess the risks involved 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.
- (i) **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 Procurement and Support Services** 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.

- (j) **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.
- (k) **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 that 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 Procurement and Support Services**.

## 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 EU 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 Procurement and Support Services**.
- (c) The current thresholds from 1<sup>st</sup> 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 Procurement and Support Services** 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' is 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 Procurement and Support Services** 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 Procurement and Support Services**.

## 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 (**Frame work contracts or call off contracts must not run for more than four years**). 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 Procurement and Support Services** – 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 Procurement and Support Services** 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 preferred practice 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 provides a good audit trail.
- (b) **All contracts/orders/invoices falling at £5,001 or above must be seen and approved by the Head of Procurement and Risk Management. This can include an email, a PDF attachment to an email, faxed copy or a link to the financial management system indicating the order or invoice in the system to be reviewed.**

### **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 Procurement and Support Services**.

- (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 concerning the tendering process unless 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 Procurement and Support Services**.



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

- (a) For transactions valued at over £139,893 **(amount shown in sterling is related to Euro exchange rate variation) for goods or services or £3.5 million for works**, prior advice of the proposed tender process must be sought from the **Head of Procurement and Support Services**.

## 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/quotations can be expected. **In an open tender situation every responder should and in fact must be offered a full set of tender documents and no exclusion can be made at this stage as the process is as suggested open to all.**
- (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 Procurement and Support Services** 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 re conduct during the tender periods
- (h) On the Closing Date specified in the public notice/advert all the tenders 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 short listing 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 has been used at that stage then it may not be used again at the evaluation 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 Procurement and Support Services** 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 Procurement and Support Services**. 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 the councils approved supplier list where sufficient suppliers exists to satisfy the competition requirements. When construction line or BIP approved suppliers are to be used “non approved” suppliers can be added to the list in order to fulfil a minimum of 3 for tendering, however “non approved” suppliers would need to become approved prior to being awarded the contract.**

- When accessing other framework agreements etc however, advice should be sought from the **Head of Procurement and Support Services** where such access is required.

### 9.3 Specifying the Contract

- (a) **The specification sets out what the contractor must provide or undertake to do, in relation to goods, services or works, under the contract. The scope and detail included should be appropriate to the value of the contracts and the risks involved in the procurement with lower value or lower risk procurements needing a brief 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 Procurement and Support Services** 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. **The responsible officer within the service must give advice and guidance as to which conditions should be used in procurements.**
- (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 **Services** 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 Procurement and Support Services**);
- (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 Procurement and Support Services** 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 Procurement and Support Services**.
- (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 Procurement and Support Services**.
- (xiv) **Some contracts entered into by the council contain or include an asset transfer that includes buildings or land that form part of the original tender specification. The awarding panel can review amendments so long as any reassessment**

**is made through the original scoring mechanism. Only if the result of the assessment(s) retains the same order i.e. the “successful” tenderer`s offer is still the best having regard to the scoring mechanism, can that offer be the one that is ultimately agreed and signed up to by the council. It must also follow the Financial Procedure Rules in relation to sale of assets.**

## **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 a period of 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 given 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 Procurement and Support Services**. 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 Procurement and Support Services**.

#### **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 Receipts, 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 tenderer 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 winning 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 accepted 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 Procurement and Support Services** 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 Procurement and Support Services**.
- (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 Procurement and Support Services**.
- (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 Procurement and Support Services** 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 Procurement and Support Services**. 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 **intends to** accept 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 Procurement and Support Services** if there are any queries or concerns or if a challenge to the process has been or is likely to be made.
- (f) **Failed bidders should be offered the opportunity to obtain feedback on why their tender was not considered acceptable. Advice should be sought from the Corporate Procurement Unit if an officer is unsure how to proceed in this regard.**

### 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 Procurement and Support Services** 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 Procurement and Support Services** 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 Procurement and Support Services** 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 Procurement and Support Services**. 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 he/she 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 Councils/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 outside 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 Procurement and Support Services** must approve the use of any framework agreements.
- (i) **The council will from time to time enter into corporate central contracts or Framework Agreement, generally although not always let for corporate needs, i.e. those things the organisation uses on a regular basis across a number of services. Such agreements have been put in place to leverage our procurement spend by having one supplier, and to offer efficiency savings with reduced procurement costs expressed as an overhead cost to the organisation. It therefore follows that for them to be successful the organisation has to maximise its expenditure through the agreement for that service or item. Details of these agreements can be found on InSite/Procurement & Office Services/Central contracts.**
  - (ii) **Failure to comply with this instruction may put you or the person placing the order at risk of disciplinary action. Internal audit will be asked to consider compliance with corporate contracts during periodic audits. The corporate or centrally let contract should always be used if one is in place for that service or commodity. It is your responsibility to check if such an agreement is in place before proceeding.**
  - (iii) **If the goods and service are not obtainable within the framework agreement or if the service can demonstrate that it can acquire either at a lower cost or a higher quality for the same cost as through the framework arrangement then agreement must be sought from the Head of Procurement and Support Services (or in his absence any Corporate Director) for an exemption to this Rule.**

## 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, 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

## **10.7 Purchase Orders**

- (a) **The use of official purchase orders should be used for orders of goods and services. This enables the organisation to review its overall financial commitments at any time.**
- (b) **This is best practice although in some special circumstances e.g. payment of quarterly energy costs it is not practicable to do so. Please contact the Finance team for advice on exceptions to this rule.**

## **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.

**“EU 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 Procurement and Support Services**.

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

Council – 9<sup>th</sup> December 2010

## 10. New Executive Arrangements

*Lead Officer: Ian Clarke, Assistant Director (Legal and Corporate Services)*  
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### Purpose of the Report

The Local Government and Public Involvement in Health Act 2007 requires the Council to choose a new form of Executive Arrangement and provides that a decision must be made by 31 December 2010.

This Report follows on from the report considered by both District Executive and Council in September and by District Executive on 2<sup>nd</sup> December and deals with both the outcome of the consultation exercise and also outlines the next stage.

### Public Interest

The Local Government and Public Involvement in Health Act 2007 requires every council which operates a Leader and Cabinet model of Executive to change its executive arrangements i.e. how “executive decisions are taken, in accordance with a statutory timetable.

This council adopted the Leader and Cabinet Executive model, called the District Executive Committee. This is where the Council elects the Leader and then the Leader appointed the members of his Cabinet.

The 2007 Act replaces the existing Leader and Cabinet Executive model. This new model is a different legal form of executive to the style that currently exists in this Council. The Act requires that the council consult on the new model and also on the alternative model of a directly elected Mayor and Cabinet. The council believes that the Leader and Cabinet Executive model works well and is the preferred option. The consultation exercise has now been completed and showed considerably more support for the Leader and Cabinet Executive model. The council, through its District Executive Committee made a formal proposal, which was publicised and made available for public inspection. This is now the final stage where the council is being asked to formally adopt the proposal.

### Recommendations:

Having regard to and in order to comply with the requirements of the Local Government and Public Involvement in Health Act 2007 with respect to executive arrangements, it is recommended that:

The outcome of the consultation and the decision of the District Executive at its meeting held on 2<sup>nd</sup> December 2010 be noted;

The Council formally adopt the strong leader and cabinet option for its executive arrangements as set out in the Proposals for Change attached to this Report as Appendix 3 as required under the Local Government and Public Involvement in Health Act 2007 and regulations made under these Acts on the grounds that this would best secure the continuous improvement in the way in which the Council’s functions are exercised, having regard to a combination of economy, efficiency and effectiveness; and

Authority is delegated to the Council's Solicitor in consultation with the three Group Leaders to determine the necessary changes to the Council's Constitution and delegation arrangements and that all changes be formally approved by Council prior to the new arrangements taking effect.

## Introduction

Members will already be aware of the background to the subject matter of this report having considered reports relating to it at both District Executive and Council in September 2010 and by the District Executive in December 2010. The report considered by Council at its meeting held on 16<sup>th</sup> September 2010 is attached to this report as Appendix 2 and contains details of the changes and differences between the various models. In brief the Local Government and Public Involvement in Health Act 2007 requires every authority that operates a Leader and Cabinet model of Executive to change its executive arrangements in accordance with a statutory timetable. This Council already operates a 'Strong Leader' model but the legislation, nevertheless, requires appropriate resolutions be made by the Council, as there are differences between the new regime and the currently existing one. The review must be completed by 31<sup>st</sup> December 2010 and any changes must be implemented 3 days after the May 2011 elections.

## Consultation

As agreed by Council a limited consultation exercise was undertaken through our web site and a press release. Amongst the media at least it generated enough interest for articles on the matter to appear in the local newspapers about the consultation and for it also to be reported on local radio. The public were given the two options and background information explaining the differences between them was also given. It was also made clear what option the Council was supporting.

The responses received are set out in Appendix 1 to this report. The number received is low and obviously consequently not statistically significant. However the overwhelming majority of the responses were in favour of the Leader and Cabinet model as opposed to the Directly Elected Mayor model.

Members will recall that the Minister for Housing and Local Government whilst acknowledging that Councils currently have to comply with the current legal requirements, advised that because the Government intends to give councils the ability to revert to the old style committee system in due course and will repeal this part of the 2007 Act, they should pursue the existing requirements at minimal cost in terms of the consultation process the Act requires.

As part of the process of choosing one of the options, proposals must be drawn up relating to the change that detail timetable and transitional arrangements that will need to be put in place. Members need to consider *"the extent to which proposals, if implemented, would be likely to assist in securing continuous improvement in the way in which the local authority's functions are exercised, having regard to a combination of economy, efficiency and effectiveness"*. In the Solicitor to the Council's opinion, the proposals attached as Appendix 3 both comply with the legislative requirements and provide for a smooth transition from the existing executive arrangements to those recommended for adoption in this report. These proposals were approved by the District Executive at its meeting held on 2<sup>nd</sup> December 2010 which resolved that:-



1. The outcome of the consultation be noted;
2. The “Proposals for Change” attached to this report as Appendix 3 be approved and the Council’s Solicitor be authorised to publish and give notice of the Proposals for Change and make a copy available for public inspection;
3. The Council formally adopt the strong leader and cabinet option for its executive arrangements as set out in the Proposals for Change as required under the Local Government and Public Involvement in Health Act 2007 and regulations made under these Acts on the grounds that this would best secure the continuous improvement in the way in which the Council’s functions are exercised, having regard to a combination of economy, efficiency and effectiveness; and
4. Authority is delegated to the Council’s Solicitor in consultation with the three Group Leaders to determine the necessary changes to the Council’s Constitution and delegation arrangements and that all changes be formally approved by Council prior to the new arrangements taking effect.

In considering whether to adopt the Leader and Cabinet model, Members will no doubt take into account the following factors:-

- The need for continuity at a time when the council was part-way through a process of change in its management and ways of working and also facing considerable financial pressures.
- Concern at the potential additional costs of the mayor option; especially as it would be likely that the mayor would become full time and expect remuneration that reflected such additional commitment.
- The absence of evidence pointing to any clear advantage in adopting the directly elected mayor model.
- The greater potential for conflict where a mayor did not have majority support from the council as a whole.
- That a leader would still need to maintain the confidence of the council as a whole throughout his/her term of office unlike a mayor who would not be subject to any recall/vote of confidence procedure.
- Recognition, that having regard to the new government’s statement concerning further legislation on councils’ choice of political management arrangements and restoring the option of a committee system, expending time and resources on a major change would be wholly inappropriate at this time.

### **Timetable for Change**

This Council must pass the relevant resolution by 31 December 2010, which is why the decision is now being sought, and implement the change three days after the next local elections (i.e. May 2011). The change to the new Strong Leader model may only be made in accordance with the statutory timetable.

### **Financial Implications**

Minimal costs have been incurred so far.

By agreeing the strong leader model the Council has avoided the additional expenditure that would arise had it chosen to conduct a referendum on adopting the directly elected major and the potential additional costs involved in operating that model particularly

having regard to the fact that the Council would need to hold mayoral elections in addition to the election of councillors at 4 yearly intervals.

### **Legal Implications**

These are set out and/or referred to in the body of the report. The timescale is prescribed.

### **Carbon Emissions & Adapting to Climate Change Implications (NI188)**

There are no specific environmental implications arising from the subject matter of this report.

### **Equalities and Diversity Impact**

There are no specific equality or diversity implications arising from the subject matter of this report.

**Background Papers:** *The Local Government and Public Involvement in Health Act 2007*

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## Appendix 1

New Executive Arrangements Consultation Responses – October /November 2010  
For Strong Leader Model

### E-Mail received 20/10/10

Dear SSDC

Having read the details of the choice for SSDC to be led by either an elected mayor or a leader I am most definitely against having an elected mayor.

The idea of going to the expense of running what would probably be a poorly subscribed election for an area that does not, I believe, have the cohesive identity to adopt a mayor, (which has traditionally been the leader of a town or city, not a largely rural area) is quite stupid given the current constraints on public funds.

Prue Biddle

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### E-Mail received 20/10/10

To The Monitoring Officer

I disagree with option 2 : for a Mayor for South Somerset

I support Option 1 : preferred "Strong Leader " Model

Michael T Place

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### E-Mail received 19/10/10

Monitoring officer,

I DO NOT support the proposal for a SSom elected mayor.

Ian Tibbitt

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### E-Mail Received 19/10/10

Given the different remits for a strong leader and a local mayor, it seems more appropriate to have a strong leader. The mayor would probably be chosen by a few people from a small constituency of committed supporters, but unknown to the majority of the electorate.

In some ways this may be the same with a strong leader, but he/she would have been elected by people who will probably have worked with the person in the past and recognise his/her qualities. The other important consideration is that they can be removed before the end the term if this is thought necessary.

Sylvia R. Hartnell-Beavis

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**E-Mail received 25/10/10**

Dear Mr Ian Clarke

I am sorry that the article concerning the choice of leader or mayor for SSDC quoted you as saying that the matter is unlikely to generate much excitement amongst the public. The matter ought to spark an outcry !

Who instigated the new legislation that even offered an elected mayor ? This is introducing yet another level of bureaucracy at the very time that the council is having to cut back on services provided to the council tax payer.

Please stick with the "strong leader" elected by the councillors - an election for a mayor is a disgusting waste of time & money.

The candidates standing for mayor would just be trying to win on popularity - the councillors are better placed to elect a strong leader who can actually do the job.

The mayor option reduces the accountability to the public & allows the elected mayor to surround himself/herself with their own "buddies" & leaves the council with reduced ability to vote the mayor out of office or to block any unpopular policies.

I hope that you actually do receive more comments than you expected from the public - we should all voice our concerns at this ridiculous move.

Please, please do NOT chose the mayor option - it is an extra cost & a decrease in democracy & the public would be no good at deciding who was right for the job anyway - we already have mayors of towns, do not add to the cost & layers of bureaucracy.

Yours sincerely,  
Mr M Paine

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**E-Mail received 29/10/10**

Sirs,

As a resident the of SSDC area, I am not convinced that SSDC need to go for Mayoral status. The District Council is not a former Borough & I feel that the present system works well.

regards,

Philip Horsington, member of Tintinhull PC.

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**E-Mail received 01/11/10**

Dear SSDC,

I would like to offer my support to the LEADER & CABINET MODEL.

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My reasoning behind this is; that I feel it is the right thing to do, allowing the duly elected councillors to elect their Leader.

To go to extra cost of electing a Mayor is not acceptable in the current financial climate, it is also not, in my view right, that, a Leader / Mayor cannot be removed by the council, if the individual is not performing acceptable standard. The idea that an election be called to replace the Mayor is impractical and expensive.

Regards

David Recardo  
Resident of YEOVIL

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#### **E-Mail received 03/11/10**

Monitoring Officer

The Finance and Policy Committee of Ilminster Town Council has now considered the options for future governance of the District Council – the strong leader model or the directly elected Mayor.

Of the two options, members would favour the status quo with continuation of the strong leader model.

Steve Fisher  
Town Clerk

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#### **E-Mail received 09/11/10**

A strong leader, not an elected mayor.

Bridget and Hugh Playfair

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#### **E-Mail received 11/11/10**

Please stick with the leader system - not a Mayor.

Julia

Julia Hailes MBE

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#### **E-Mail received 13/11/10**

We are strongly in favour of the "Strong Leader" option for the following reasons:-

1. A leader elected by the councillors, most of whom will know him/her well, is likely to be a wiser choice than a mayor elected on the basis of a populist appeal and/or political allegiance.
-

2. The councillors' ability to replace a leader is an important safeguard against what may turn out to be an unwise election, or a leader whose performance deteriorates for whatever reason.
3. Similarly, we regard it as more democratic for the councillors to have the power to accept or reject proposals by a simple majority. Collectively, they have more in-depth knowledge of their wards and of the district than a single individual can have.
4. The decisions of a council leader are likely to have more public acceptance than those of a directly elected mayor who, rightly or wrongly, may be perceived as owing his/her election to one type of interest e.g. the interests of the largest town, the interests of the rural community etc.

We therefore support the Council's initial opinion in favour of the Strong Leader option.

Don and Gillian Macdonald

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**E-Mail received 17/11/10**

My vote would be to stay with the existing arrangement.

I.E.GREEN

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**E-Mail received 17/11/10**

Dear Sir,

As a resident of South Petherton, I was interested to read of the options for a leader of South Somerst District Council. I find the option of an elected Mayor dangerous if he has the powers suggested in the ta13 News for winter 2010 and your website. Once elected, it appears that the Mayor cannot be removed until his four-year term expires, regardless of any potential problems; and that it will only be possible to overturn his budget with a two-thirds majority, again regardless of the strength of feeling of minorities and basic democratic principles. Also, if the current system is working well, then there seems little point in the major alterations suggested to a Mayor.

Yours faithfully  
Dr T. F. Robinson

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***For Directly Elected Mayor***  
**E-Mail received 26/10/10**

I believe that there is one particular advantage in having a mayor. Because he or she cannot be removed during the period of office the mayor will be able to take a long term view, and take unpopular but necessary actions which would otherwise be vetoed by nervous councillors.

Michael Canton

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**E-Mail received 08/11/10**

FAO the Monitoring Officer

I have just come across a brief mention in November's Marshwood Vale Magazine of proposed changes to the leadership of SSDC under new legislation. The article says that the options are either "a strong leader or elected mayor".

I follow politics closely in the print and broadcast media but this is the first inkling I have received about this highly contentious and far-reaching proposal. Is it really true? And the deadline for comment is really just 11 days' time?

Should the magazine have the correct information then perhaps you would care to answer the following questions:

1. Does the proposed change imply criticism of the current leadership of SSDC and its chief executive as perhaps too weak and lacking in direction? Do they step down should either of the proposed options be implemented?
2. Does the tie-up with another council in another county fall by the wayside? (Mayor of South Somerset and East Devon?)
3. Would a change bring with it yet another ramping up of allowances and salaries?
4. Why has there not been wider dissemination of information about a change of this dimension?

Presumably the Government has followed the path taken by the previous Labour administration in concentrating local government powers in fewer and fewer hands to facilitate central control. Whichever option is taken would result in a significant dilution of democracy with the vast majority of councillors reduced to mere ciphers on the back benches - as per SCC. That is why I am strongly opposed to both options - but the lesser evil would be an elected mayor over whom there would at least be a measure of control once every four years or so.

Mr L.Farris

(reply sent setting out process and responding to questions)

***No Preference expressed*****E-Mail received 27/10/10**

Dear Sir or Madam

With a Directly Elected Mayor and Cabinet system I am interested to know more about how the election will be conducted. For instance, how are nominations for Mayor decided? Where can I read up on the detail?

Yours sincerely

Tom Billing MILCM  
Clerk & RFO Compton Dundon Parish Council

(reply sent 28/10/10 outlining Act etc)

## APPENDIX 2

Council – 16<sup>th</sup> September 2010

### 10. New Executive Arrangements

*Lead Officer:* Ian Clarke, Assistant Director (Legal and Corporate Services)  
*Contact Details:* [ian.clarke@southsomerset.gov.uk](mailto:ian.clarke@southsomerset.gov.uk) or (01935) 462184

#### Purpose of the Report

The Local Government and Public Involvement in Health Act 2007 requires the Council to choose a new form of Executive Arrangement and provides that a decision must be made by 31 December 2010. This Report outlines the legislation and the choice that must be made between a Leader and Cabinet model or arrangements with an Elected Mayor.

#### Public Interest

The Local Government and Public Involvement in Health Act 2007 requires every council which operates a Leader and Cabinet model of Executive to change its executive arrangements i.e. how “executive decisions are taken, in accordance with a statutory timetable”.

This council adopted the Leader and Cabinet Executive model, called the District Executive Committee. This is where the Council elects the Leader and then the Leader appointed the members of his Cabinet.

The 2007 Act replaces the existing Leader and Cabinet Executive model. This new model is a different legal form of executive to the style that currently exists in this council. The Act requires that the council consult on the new model and also on the alternative model of a directly elected Mayor and Cabinet. The council believes that the Leader and Cabinet Executive model works well and is the preferred option. The outcome of the consultation exercise will be considered by the council before they make their final decision.

#### Recommendations

Having regard to and in order to comply with the requirements of the Local Government and Public Involvement in Health Act 2007 with respect to executive arrangements, it be recommended that:

1. Council indicates it is minded to continue to operate the Leader and Cabinet Executive subject to the new requirements imposed by the said Act and pending the outcome of consultation;
2. The Council's Solicitor be authorised to carry out appropriate consultation on executive arrangements, indicating the Council's preferred model, as stated in 1, and also including reference to the alternative option provided for in the 2007 Act. The consultation should include information about the differences between the available options and also the implementation timetable; and



3. Following consideration of the consultation response, proposals be reported to a future Meeting of the Council, no later than 31 December 2010, for the Council to resolve as to the form of executive arrangements to be operated by it.

## Introduction

The Local Government and Public Involvement in Health Act 2007 requires every authority which operates a Leader and Cabinet model of Executive to change its executive arrangements in accordance with a statutory timetable. This Council already operates a 'Strong Leader' model but the legislation, nevertheless, requires appropriate resolutions be made by the Council, as there are differences between the new regime and the currently existing one. These differences are set out in the report. The changes are not significant in terms of how this authority operates but the legislation demands a particular course of action be followed.

## Background

The Local Government Act 2000 required all principal authorities to adopt 'executive arrangements' in one of three forms, namely:

- (1) Mayor and Cabinet Executive;
- (2) Leader and Cabinet Executive; or
- (3) Mayor and Council Manager.

This Council adopted the Leader and Cabinet Executive and, in particular, the Strong Leader model where the Council elects the Leader and then the Leader appointed the Executive and also determined the degree of delegation of powers to individual Executive Members. As members are aware the Cabinet is referred to as the 'District Executive'.

Part 3 of the Local Government and Public Involvement in Health Act 2007 abolishes the Mayor and Council Manager model and replaces the Leader and Cabinet Executive model with the Leader and Cabinet Executive (England) model. This new model is a different legal form of executive to the style that currently exists in South Somerset, with the result that the transition to the new Leader and Cabinet Executive (England) model, as required by the Act, is a 'change to the form of executive' as set out in the Act, even where the authority is operating an old style Leader and Cabinet Executive (as is the case here). So even when a Council operates such an old-style arrangement it is still obliged to go through the extended process set out in the Act to change the arrangements, despite the actual change in the form of executive being very limited. Recently the Minister for Housing and Local Government whilst acknowledging that Councils currently have to comply with the current legal requirements, has advised that because the Government intends to give councils the ability to revert to the old style committee system in due course and will repeal this part of the 2007 Act, they should pursue the existing requirements at minimal cost in terms of the consultation process the Act requires. The proposal is that the consultation consists of a press release and a notice on our web site.

This report was presented to District Executive on 2<sup>nd</sup> September 2010 where Members were content to agree that the proposals be recommended to Council.

## The New Leader and Cabinet Executive Model

The new Leader and Cabinet Executive Model (England) Model is very similar to the old “Strong Leader” model of a Leader and Cabinet Executive, but is different in three key respects which cannot be achieved under the old legislation.

In the new model as in the old-style Leader and Cabinet Executive, the Council elects the Leader and the Leader is then responsible for:

- Determining the size of the Cabinet;
- Appointing Members of the Cabinet;
- Allocating Portfolios and areas of responsibility to the various Cabinet Members;
- Allocating decision-making powers to the Cabinet and to individual Cabinet Members; and
- Removing and replacing Cabinet Members.

In the new model, the Leader must be elected for a four-year term of office (or up until the Leader’s ordinary term of office as a Councillor expires where the Council holds elections by thirds or halves, and the Leader is elected at a time when he/she has less than four years still to run). This was possible under the old model but it was normal for the Leader to be elected for a one-year term of office.

The three key differences referred to above which are required in the new Leader and Cabinet Executive (England) model but cannot be achieved under the old model are:

- The Leader’s term of office is extended beyond the 4th day after the local elections to run up to the day of the first annual meeting after the Leader’s normal day as retirement as a Councillor.
- During his/her term of office, the Leader will automatically cease to be Leader upon resignation, death or disqualification but may **only** be removed from office by a resolution of Council.
- There is a requirement for the Leader to nominate a Deputy Leader, and provision that the Deputy Leader, or in his/her absence the remaining Executive Members, may act if the Leader is unable to act or the post of Leader is vacant. Whilst our current arrangements have a Deputy Leader, the only powers that may be exercised by that person are the ‘portfolio responsibilities’ of the Leader (as well as their own Portfolio responsibilities) as opposed to the statutory functions which are conferred by statute solely on the Leader, such as appointing or removing other Cabinet Members or objecting to senior officer appointments and dismissals (where applicable).

## Directly Elected Mayor and Cabinet

There is an alternative form of executive arrangement and that is for the Council to hold elections for a Directly Elected Mayor who would hold office for a term of four years. In this instance, as the Mayor would have been directly elected, there would be no option for the Council to remove him/her during the period of office. The Mayor would appoint his/her own Cabinet consisting of between 2 and 9 Councillors and allocate all executive functions to them as appropriate.

## Differences between the Two Models

The main differences between the two models are as follows:

- There is a different means of election for each.
- Unlike the Leader, the Mayor cannot be removed from office by the Council or the controlling group.
- Under the Leader and Cabinet model, the executive recommends the budget and strategic policies to Council, which may approve, amend or overturn them by a simple majority. Under the Mayor and Cabinet model the executive submits the budget and strategic policies to the Council, which can only amend or overturn them by a two-thirds majority.

### **Timetable for Change**

The legislation has a different timetable for the differing types of local authority. This Council must pass the relevant resolution by 31 December 2010 and implement the change three days after the next local elections (i.e. May 2011). The change to the new Strong Leader model may only be made in accordance with the statutory timetable.

### **The Process for Change**

Essentially there would seem to be a three-stage process:

1. Before drawing up proposals for change the Council must 'take reasonable steps to consult the local government electors and other interested persons in the area'. There is a choice of moving either to a Leader and Cabinet Executive model, which broadly reflects the current arrangements or to a Mayor and Cabinet Executive model. For any consultation to be effective a particular model should be proposed. Accordingly it makes sense for the Executive to recommend to Council, and Council resolve, that this Council's preferred option was to consult on the basis that the authority would prefer, subject to the consultation, to move to a Leader and Cabinet Executive (England) model. Earlier in the report it sets out what consultation would be carried out. It is suggested that there should be a brief statement of what the changes would mean with advantages and disadvantages of the Leader and Mayor structures and follow the consultation process set out earlier.
2. The Council (via its Executive) should then draw up proposals, which should be a schedule of proposed changes to the Constitution, the implementation timetable and any transitional arrangements. In drawing up the proposals the Council must have regard to any impact on economy, efficiency and effectiveness. Once the proposals have been drawn up, the Council must make them available to the public and advertise that they are available (although there is no provision for anyone to comment on them at this stage).
3. The Council must resolve to implement the proposals.

It is envisaged that the consultation period of one month should take place during October and November with the report on the outcome being considered by the Executive and then Council in December 2010.

### **Financial Implications**

There may be some cost incurred in relation to advertising the proposal but both these and officer time in dealing with any consultation responses can be met from existing resources.

## Legal Implications

These are set out in the body of the report. The timescale is prescribed.

## Carbon Emissions and Adapting to Climate Change Implications (NI188)

There are no specific environmental implications arising from the subject matter of this report.

## Equalities and Diversity Impact

There are no specific equality or diversity implications arising from the subject matter of this report.

**Background Papers:** *The Local Government and Public Involvement in Health Act 2007*

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## APPENDIX 3

### Executive Arrangements New Governance Proposals

These proposals have been drawn up in accordance with the provisions of the Local Government and Public Involvement in Health Act 2007 for a change in the authority's executive arrangements.

As required by the legislation, public notice has been given that these proposals are available for public inspection.

This document describes the proposals.

### Background

The Act inserted new provisions in the Local Government Act 2000 and also amended other local government legislation and requires all local authorities to review their executive arrangements. The district council is required to review its own arrangements by 31 December 2010. Any changes must be implemented 3 days after the date of the May 2011 local elections.

The council is required to adopt one of two executive arrangements:

- New style leader and cabinet executive
- Mayor and cabinet executive.

Continuing with the status quo is not an option.

Under the provisions of the Local Government Act 2000 the council adopted what is now referred to as the "old style Leader and cabinet executive" under the old provisions of S. 11(3) of the Local Government Act 2000.

Section 33E (6) of the Local Government Act 2000 says that "Before drawing up its proposals (*in relation to the new executive arrangements*), the local authority must take reasonable steps to consult the local government electors for, and other interested persons in, the authority's area."

The council agreed a consultation period, which closed on 19<sup>th</sup> November 2010. Information was provided on the council's website and those responding to the consultation were given the opportunity to make additional comments. The launch of the consultation was announced via a press release, which resulted in articles in the local press, including the Western Gazette and a mention on local radio. Additional information was made available as requested and answers given to any questions asked about the process.

The question asked of residents and other interested persons was if they believed the council should continue to operate with a leader and cabinet or move to a directly elected mayor and cabinet. Background information was provided explaining the differences between the 2 options.

Responses to the website consultation were set out in the report to the council's District Executive at its meeting on 2<sup>nd</sup> December 2010.

Further background information is available on the council's website at <http://www.southsomerset.gov.uk>

## Features of the proposed new executive arrangements

- A leader to be elected by the full council for a 4-year term commencing at the annual meeting (the first to be held following the local elections due to take place on 5 May 2011).
- Provide for a cabinet comprising the leader and between 2 and 9 councillors appointed by the leader.
- Require the leader to appoint one of the cabinet as deputy leader and for the deputy leader's term of office to match that of the leader, save that the leader can end the appointment at any time and appoint a new deputy leader.
- Provide for the deputy leader to exercise all the powers of the leader in the absence of the leader.
- Allow for full council to remove the leader from office on a vote of no confidence and appoint a new leader.
- Provide for the leader to discharge all of the authority's executive functions or make arrangements for their discharge by the cabinet, a member of the cabinet, a committee of the cabinet or by an officer of the council.
- Maintain the current allocation of "local choice" functions between the executive and the council.
- Transitional arrangements whereby the council's current arrangements remain in force until the 8 May 2011 and provide for appropriate arrangements to be made for the exercise of executive functions and responsibilities between 8 May and the day of the annual meeting (see below).

## Timetable and transitional arrangements

The council is due to formally adopt the new arrangements at their meeting on 9<sup>th</sup> December 2010. The new style leader and cabinet arrangements must be implemented by the 3<sup>rd</sup> day after the local elections due to be held on 5 May 2011 (i.e. on 8 May 2011 at the latest). The council are proposing that in the interim (from 9<sup>th</sup> December 2010 to 7 May 2011 inclusive), the existing arrangements will continue to operate.

As the council's annual meeting, at which the first election of the new style leader will take place, is not scheduled to be held until 19<sup>th</sup> May 2011, the leader in office on 8<sup>th</sup> May will take on the powers and responsibilities of the new style leader. This will be irrespective of whether or not the leader has been re-elected to the council. The leader shall appoint a deputy and may also appoint members to a cabinet.

In the event that the leader at this time no longer commands the support of a majority of the members of the council having regard to the known party affiliations of the newly elected council, the leader (or the deputy leader if acting in the absence of the leader) and cabinet (if appointed) shall only exercise their powers with the agreement of the council's chief executive who will consult with the leader of the majority group (or the other group leaders if no one group has a majority) to ensure that no decision is taken that in his judgement does not command the support of the leaders representing a majority of the members of the council. The exercise of delegated powers by officers of the council will be subject to a similar limitation in this period. Where a delegated power requires consultation with the leader or cabinet portfolio holder, the requirement will be extended to include the leader or leaders of other groups (or their respective spokespersons if identified).

## Reasons for the council's choice

The council believes that adopting the strong leader and cabinet option will best secure the continuous improvement in the way in which the council's functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

In reaching this view the following factors were identified:

- The need for continuity at a time when the council was part-way through a process of change in its management and ways of working and also facing considerable financial pressures.
- Concern at the potential additional costs of the mayor option; especially as it would be likely that the mayor would become full time and expect remuneration that reflected such additional commitment.
- The absence of evidence pointing to any clear advantage in adopting the directly elected mayor model.
- The greater potential for conflict where a mayor did not have majority support from the council as a whole.
- That a leader would still need to maintain the confidence of the council as a whole throughout his/her term of office unlike a mayor who would not be subject to any recall/vote of confidence procedure.
- Recognition, that having regard to the new government's statement concerning further legislation on councils' choice of political management arrangements and restoring the option of a committee system, expending time and resources on a major change would be wholly inappropriate at this time.

## Contact details

For further information please contact:

Ian Clarke Solicitor to the Council, South Somerset District Council, Brympton Way, Yeovil, Somerset. BA20 2HT

Telephone (01935) 462462

E-mail [ian.clarke@southsomerset.gov.uk](mailto:ian.clarke@southsomerset.gov.uk)

This proposals document is published by the Solicitor to the Council in accordance with the District Executive's resolution of 2<sup>nd</sup> December 2010 on this matter.

Council - 9<sup>th</sup> December 2010

## 11. Report of Executive Decisions

*Lead Officer: Angela Cox, Democratic Services Manager*  
*Contact Details: angela.cox@southsomerset.gov.uk or (01935) 462148*

This report is submitted for information and includes recommendations to be considered by the Executive on 2<sup>nd</sup> December 2010, after the despatch of this agenda. Council will receive an update of the decisions taken on 2<sup>nd</sup> December. The report also includes decisions taken by individual Portfolio Holders since the last meeting of Council. The decisions are set out in the attached Appendix.

Members are invited to ask any questions of the Portfolio Holders.

**Background Papers:** *All Published*

*Tim Carroll, Leader of the Council*  
*Angela Cox, Democratic Services Manager*  
*angela.cox@southsomerset.gov.uk or (01935) 462148*

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## Appendix

Portfolio	Subject	Decision	Taken By	Date
Health, Housing & Spatial Planning	Amendment to the existing Policy for Private Hire and Hackney Carriage Driver Applications relating to the Driving Standards Agency (DSA)	The Portfolio Holder agreed to amend the existing policy for private hire and hackney carriage driver applications to also include the acceptance of a DSA equivalent test as determined by the Council.	Portfolio Holder	Executive Bulletin No. 451 19/11/10
Strategy and Policy	Quarterly Performance Monitoring Report	The District Executive is recommended to: 1. note the performance monitoring report including those areas highlighted under 'performance exceptions' where performance is either below target levels or has deteriorated. 2. note the summary of complaints for the second quarter of 2010/11.	District Executive	02/12/10
Strategy and Policy	Joint Working Update	This report was due to be recommended to Council and appears elsewhere on the agenda.	District Executive	02/12/10
Health, Housing and Spatial Planning	Statement of Licensing Policy	This report was due to be recommended to Council and appears elsewhere on the agenda.	District Executive	02/12/10
Resources and Legal Services	Capital Programme 2011/12 to 2015/16	The District Executive is recommended to: 1. consider and note the proposals outlined for inclusion in the revised Capital Programme. 2. note the available funding from the ICT reserve.	District Executive	02/12/10
Leader of the Council	Annual Audit Letter	The District Executive is recommended to note the contents of the Audit Letter as set out in the report.	District Executive	02/12/10
Leader of the Council Strategy and Policy	Changes to Redundancy and Severance Pay Policy	This report was due to be recommended to Council and appears elsewhere on the agenda.	District Executive	02/12/10
Leader of the Council Strategy and Policy	New Executive Arrangements (December 2010)	This report was due to be recommended to Council and appears elsewhere on the agenda.	District Executive	02/12/10

Strategy and Policy	New Homes Bonus Consultation	District Executive is recommended to <ol style="list-style-type: none"> <li>1. the responses to the 12 questions put forward by the DCLG and contained within the report are noted</li> <li>2. officers are authorised to return the consultation to the DCLG.</li> </ol>	District Executive	02/12/10
Resources and Legal Services	Update on Medium Term Financial Plan	District Executive is recommended to note the current position of the Medium Term Financial Plan.	District Executive	02/12/10
Environment and Property Yeovil Vision and Community Safety	Regeneration of Yeovil Town Centre – Options appraisal for Newton Road car park, The Old Tattoo Parlour and Coldharbour Lane	This report was due to be considered in closed session. District Executive is recommended to: <ol style="list-style-type: none"> <li>1. Agree to progress with Option 1 and to proceed with Option 2 once viable;</li> <li>2. Allocate the appropriate funding from the 'Reverse Scheme for Yeovil Vision' (Old Town Station Budget)</li> </ol>	District Executive	02/12/10

Strategy and Policy	Area North Accommodation Review	<p>This report was due to be considered in closed session. District Executive is recommended to:</p> <ol style="list-style-type: none"> <li>1. Note the update to the resolutions of District Executive in October 2010;</li> <li>2. Approve that any remaining capital allocation currently made to move the server at Kelways is vired to enable any capital works to new premises can be made;</li> <li>3. either <ol style="list-style-type: none"> <li>a) Authorise the Area Development Manager North to secure and maintain suitable temporary arrangements, for Area North staff, pending a fuller evaluation of the potential to share an SCC Library.</li> <li>or</li> <li>b) Authorise the Assistant Director (Finance and Corporate Services) to negotiate an office unit for Area North on a lease of no longer than three years, in consultation with the Leader, and all relevant Portfolio Holders, whilst maintaining the use of Langport Information Centre as a public access point.</li> </ol> </li> </ol>	District Executive	02/12/10
Leisure and Culture	Transfer of Sport & Leisure Facilities – Selection of Preferred Bidder	This item was being deferred for consideration at a Special District Executive meeting on 9 <sup>th</sup> December 2010.	District Executive	02/12/10

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## 12. Audit Committee

This report summarises the items considered by the Audit Committee on 25<sup>th</sup> November 2010.

### **2010/11 Internal Audit Quarterly Update Report**

The Audit Manager, South West Audit Partnership, provided members with a summary of Internal Audit activity for quarter 2 including the position on progress with the Annual Audit Plan until 31st October 2010.

The officers answered members' questions on points of detail and the Committee noted and accepted the report.

### **Annual Audit Letter**

The Audit Manager and District Auditor from the Audit Commission introduced the Annual Audit Letter for the 2009/10 financial year, a copy of which is attached to the Committee's agenda.

In summarising the report the District Auditor contrasted it with the Annual Governance Report, which was presented to the Committee's September meeting. He indicated that the content of the Annual Audit Letter was similar to that of the Annual Governance Report but was written in a more straightforward and understandable way. There were some additions, however, details of which he explained to the Committee.

Reference was made to the Commission being satisfied that the authority was well prepared for the introduction of IFRS (International Financial Reporting Standards) for next year's accounts. The Committee also noted that an unqualified opinion had been given on the Statement of Accounts for 2009/10.

The District Auditor explained that the criteria used to assess whether the Council had adequate arrangements for Value for Money had changed since the Government's announcement that Comprehensive Area Assessment would cease and the Commission no longer issued Use of Resources scores. He indicated that a simple yes or no was now given as to whether adequate arrangements were in place and it was noted the Council was well within the minimum standards and an unqualified conclusion was given on the Council's arrangements for securing economy, efficiency and effectiveness in the use of resources.

The District Auditor also indicated that the Government's Comprehensive Spending Review, which included a reduction in funding for local government of 7.1% a year from 2011/12 for the next 4 years, had been referred to in the Annual Audit Letter. It was recognised that the Council would need to find significant savings and that steps were being taken to address that issue.

Comment was expressed by members that the reductions in funding would not necessarily be 7.1% each year as it may be that the greatest reductions would be required in the earlier years. Given that possibility, the Committee felt that the reference in the Annual Audit Letter would be better shown as 28% over the next 4 years from 2011/12. The Audit Manager indicated his agreement to amend the report accordingly.

The District Auditor further indicated that the Letter recognised that the partnership with East Devon District Council was in its early stages. It was also noted that as part of that partnership the compatibility of IT systems was being reviewed and bearing in mind that partnerships could expand it was recommended that regard should be had to compatibility with other neighbouring authorities.

The Audit Manager and District Auditor responded to members' questions and the Committee thanked them for their report.

The Committee was pleased to note the contents of the Annual Audit Letter and also that the wording regarding the reduction in funding arising from the Government's Spending Review would be amended as mentioned above.

### **Treasury Management Performance to September 2010**

The Committee reviewed and noted the Treasury Management Activity and the performance against the Prudential Indicators for the six months ended 30th September 2010.

Particular reference was made to a recommendation to raise the maximum limit for investments with the Bank of Scotland/Lloyds Banking Group, which was currently set at £6,002,000. It was noted that the Council's Treasury Advisers, Arlingclose, were comfortable with the Council increasing the group limit to £9,002,000 but maintaining a £6,000,000 individual limit for each of the two banks (plus any outstanding interest for Bank of Scotland). That would enable the Council to take advantage of higher interest rates for investing for longer periods rather than using our short term money market funds.

Given the current banking issues in Ireland, the Committee asked that confirmation be sought that raising the limit with the Bank of Scotland/Lloyds Banking Group would not increase the risk for the Council. The Committee agreed that further clarification be sought from Arlingclose regarding this issue and that any increase in the maximum limit for investments with the Bank of Scotland/Lloyds Banking Group be delegated to the Section 151 Officer (Assistant Director (Finance and Corporate Services)) in consultation with the Chairman of the Audit Committee.

*Cllr Derek Yeomans  
Chairman of Audit Committee*

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### 13. **Scrutiny Committee**

This report summarises the work of the Scrutiny Committee since 18<sup>th</sup> November 2010.

#### **Items considered at Scrutiny Committee on 30<sup>th</sup> November 2010**

##### **Local Strategic Partnership Annual Review**

Councillor Paull Robathan as Chair of the LSP introduced the report outlining the achievements of the LSP in the year to March 2010. Members of the Scrutiny Committee noted the progress of the LSP in delivering the Sustainable Strategy (2008-2026) and that it achieved best Local Strategic Partnership in the country for 2010 in the Community Partnership Awards.

In addition, Scrutiny members asked that in future more emphasis is given to the positive contribution the LSP makes to key projects and that a session on the role and responsibilities of the LSP be included in the induction for members following the May 2011 elections.

##### **Finance Update**

The Assistant Director (Finance & Corporate Services) updated the Committee on the current budget situation.

##### **Changes to SSDC Redundancy Policy**

Members of the Committee discussed the report as included in the District Executive agenda for 2/12/10. Members endorsed the recommendations in the report and noted that SSDC's terms remained generous when compared to other Somerset authorities.

##### **The Future of Working with East Devon District Council**

Members of the Committee agreed that this matter would be discussed in more detail at the members briefing session on 9<sup>th</sup> December and at the Council meeting later that day.

##### **Task and Finish Review work**

##### **Partnerships Task and Finish Group**

Councillor Martin Wale is chairing this review group. The purpose of the review is to review all SSDC partnerships on the partnership register, with a view to rationalising the number of partnerships and ensure that the remaining partnerships are achieving value for money. The review group has now met on three occasions.

Members of the Committee have also agreed to consider establishing a Task and Finish Group in the new year to investigate drawing up a Volunteering Scheme for SSDC employees.

In addition to the above mentioned work the Scrutiny Committee continues to consider reports that will be considered at District Executive and comments at District Executive.

*Sue Steele, Chairman of Scrutiny Committee  
Emily McGuinness, Scrutiny Manager (01935) 462566*

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## 14. Motions

**The following Motion has been submitted by Councillor Tim Carroll:**

### **Motion**

To instruct Council Officers to negotiate with developers of A) the BRIMSMORE site (Site 4) and B) the BUNFORD Site (Site 44) within the framework of current ongoing planning negotiations to identify and secure an appropriate area for the Sports Zone development within one or other of these 2 sites. Any future financial implications arising out of these negotiations will be reported back to Members once a conclusion has been achieved and any decision on acquisition or development will be taken at that time.

### **Background**

At the SSDC Full Council on the 8<sup>th</sup> January 2009, the following 2 resolutions were debated with indicated outcomes as detailed below:

2.1 To approve the illustrative facility mix recommended by the Sports Zone Project Board.

(32 for, 24 against, 1 abstention – named vote)

2.2 Not to progress with the submission of a capital bid £364k as part of the 2009/10 Medium Term Financial Plan process, to progress to Stage D of the project to proceed with an outline planning application for the Sports Zone at the Yeovil Recreational Centre. (31 for, 24 against, 1 abstention – named vote)

Clearly resolution 2.1 represented this Council's acceptance of the Yeovil Sports Zone concept per se and the provision of the detailed components of the facility to address not only the increasing current deficiencies of Indoor Sporting facilities within the Yeovil area but also to meet the needs of the future residents of Yeovil envisaged under the current and future expansion of the town, as well as providing a strategic indoor sporting facility for the whole District.

Resolution 2.2 represented a moratorium on further work (as detailed in the wording) to advance any more detailed work on an indoor sporting facility located at Yeovil Rec.

Following this debate, this Council had a residual duty as predicated under the first resolution to continue the search for an appropriate site to fulfil the aspiration of an improved Indoor Sporting Facility in the Yeovil area.

As any subsequent work associated with this initiative required funding and as the Council had made no additional revenue or capital financial provision through its budgetary process for this purpose, a formal bid was made to the Yeovil Vision Board. This resulted in an award of £25,000 in revenue funding from YVB.

Following a tendering exercise, the Council through the Sports Zone Project Board (which had oversight of the project), subsequently let a contract to Alliance Planning to undertake a further Site Option Re-appraisal process which would include all the original sites that were considered within the initial Site Appraisal exercise undertaken by RPS Planning plus any other opportunities that may arise in the elapsed period between the two exercises. Within the specification of the contract, a wide technical appraisal mechanism was included along with a consultation exercise.

The final report has now been distributed to Members. In light of the recommendations contained within the report (Section 8), it is now appropriate to give clarity for a way forward for the Yeovil Sports Zone Project. It is appreciated that because of the current austerity crisis that it is improbable that any physical development will take place in the immediate future until the financial climate is more benign BUT it is critical that we plan for such a development.

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**15. Questions Under Procedure Rule 10**

None received.

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**16. Date of Next Meeting**

Members are asked to note that the next scheduled meeting of the Full Council will take place on Thursday, 20<sup>th</sup> January 2011 in the Council Chamber, Council Offices, Brympton Way, Yeovil commencing at 7.30 p.m.

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