

These Contract Standing Orders were approved by the County Council on the 19th July 2006

SOMERSET COUNTY COUNCIL STANDING ORDERS FOR THE REGULATION OF CONTRACTS

1. Purpose and Intent of Contract Standing Orders

1.1 By law, the County Council must make standing orders with respect to contracts for the supply of goods or services or for the execution of works which provide for:

- securing competition; and
- regulating the manner in which tenders are invited.

1.2 These Contract Standing Orders form part of the County Council's Constitution. Compliance by all staff is mandatory and contravention is a serious matter which may result in disciplinary action. They set out the administrative procedure that must be followed in seeking tenders and letting contracts for the supply of goods, services and works.

1.3 The objective of these Contract Standing Orders is to ensure that such contracts are awarded on the most financially favourable terms, having due regard to quality, service and fitness for purpose, the Council's Procurement Strategy and the policies of the Council.

1.4 These Contract Standing Orders have four main purposes:

- (i) to ensure that the County Council obtains Best Value in the way it procures supplies, services and works money, so that in turn it may offer Best Value services to the public;
- (ii) to comply with the laws that govern the spending of public money;
- (iii) to protect individuals from undue criticism or allegation of wrongdoing;
- (iv) to facilitate partnership working with others.

1.5 The Corporate Director (Resources) is the officer with overall corporate responsibility for procurement and as such is the custodian of these Contract Standing Orders and is responsible for keeping them under review. If the European Union (EU) Directives or any other law is changed in a way that affects these Contract Standing Orders, then the applicable law must be observed until the Contract Standing Orders can be revised. If the Contract Standing Orders appear to conflict with EU Directives or any other legislation, then the legislation takes precedence.

1.6 In applying these Contract Standing Orders, officers shall have regard to the County Council's Procurement Strategy and to the principles set out therein relating, for example, to sustainability, equalities, health and safety, and to any practice notes issued by the Corporate Procurement Unit. Details are available on the Corporate Procurement Unit's Intranet site.

1.7 Corporate Directors shall ensure:

- (a) awareness of these Contract Standing Orders within their Directorates and ensure that they are followed;
- (b) that those letting contracts and managing the contracts within their Directorates are properly trained.

2. Extent of Contract Standing Orders

- 2.1 Corporate Directors are empowered to enter into contracts on behalf of the Council, subject to these Contract Standing Orders.
- 2.2 These Contract Standing Orders must be observed on every occasion the Council enters into a contract.
- 2.3 These Contract Standing Orders apply to contracts for the supply or disposal of goods or materials including public utilities ('supply contracts'), for the supply of services ('service contracts') or for the execution of works ('works contracts').
- 2.4 Certain contracts specified and approved by the Procurement Board will be entered into on behalf of the whole County Council and Corporate Directors are not empowered to enter into any other contracts for these supplies and services or works. The Head of Finance will maintain a list of such contracts and will circulate a copy of it at intervals of not more than twelve months to all Corporate Directors and Heads of Service. (Head Teachers are not obliged to comply with this Contract Standing Order, but they are encouraged to take advantage of the value for money that corporate contracts offer.)
- 2.5 Where the provisions of any Directive adopted by the Council of the European Union in relation to procedures for the award of public service contracts, public supply contracts or public works contracts will be applicable to a contract into which the Council proposes to enter, the requirements of the relevant Directive must be complied with in all respects before the contract is entered into. (See Appendix 1 for a brief summary of when the Directives apply.)
- 2.6 In exercising those functions of the Council in relation to supply contracts, service contracts and works contracts which are both governed by these Contract Standing Orders and regulated by Section 17 of the Local Government Act 1988, the non-commercial considerations listed at sub-section 5 of that Section must be excluded, save to the extent that the restrictions have been amended in relation to employment and race relations matters.
- 2.7 *Crime and Disorder*
In taking any steps in relation to the procurement of goods, services or works, including preparing a specification and prescribing arrangements to be observed during the period of a contract, officers shall exercise the functions of the County Council with due regard to the likely effect on, and to the need to take all reasonable action to prevent, crime and disorder, in accordance with its duty under section 17 of the Crime and Disorder Act 1998.
- 2.8 Any reference in these Contract Standing Orders to an Act of Parliament includes a reference to any Regulations made under it and to any statutory provision for the time being in force amending or replacing it or them.
- 2.9 Any procurement exercise where the Voluntary and Community Sector might realistically be involved should have regard to the Somerset Voluntary and Community Sector Compact and in particular the need to design commissioning and procurement arrangements in a way that allows the Voluntary and Community Sector to access opportunities to deliver services.

3. Definition of Terms

- 3.1 In these Contract Standing Orders:

'*Consideration payable*' means the total value of consideration payable by or to the Council during the life of the contract or any series of contracts of which it forms a part.

“A contract” means any service contract, supply contract or works contracts (as defined at Contract Standing Order 2.3 above) whether in writing or not but (for the avoidance of doubt) does not include any contract of employment or for the sale or purchase of any interest in land.

“Corporate Director” means any Corporate Director of the Council and any member of his or her staff duly authorised by him or her to take any action under or in pursuance of these Contract Standing Orders, whether generally or in relation to a particular contract. *Note:* The Head of Paid Service shall have authority to change the officer posts referred to in these Contract Standing Orders.

“The Corporate Director concerned” means the Corporate Director responsible under Part 3 of the Council’s constitution for managing or delivering the function of the Council in connection with which a contract has been or is proposed to be awarded. In this context it also applies to heads of schools with delegated budgets. In the event that two or more Corporate Directors are responsible for managing or delivering all or part of the relevant function, any of them may act as the Corporate Director concerned.

“The Council” means either the Somerset County Council or, in relation to any contract arising from a function which is the responsibility of its Executive by virtue of executive arrangements operated under Part II of the Local Government Act 2000, the Executive for the time being of the Council and “the Executive” shall be construed accordingly.

The ‘Disclosure Register’ means the Register maintained by the Corporate Procurement Unit in accordance with Contract Standing Order 11.2 below.

‘Negotiation’ means any alteration in the terms of a tender offered to the Council or in the requirements of the Council in relation to such tender, and shall include any variation in the terms of a tender whether by deletion of any requirement or provision or the rectification of any error or omission or otherwise.

The ‘Procurement Board’ refers to the officer board which is chaired by the Corporate Director (Resources) and which reports to the Strategic Management Board on corporate procurement, and appropriate committees of the County Council including Scrutiny Committee.

‘The Register of Contracts’ means the register maintained by the Corporate Procurement Unit in accordance with Contract Standing Order 11.1 below.

A ‘Responsible Procurement Officer’ is an officer delegated by a Corporate Director to carry out procurement activity on his/her behalf.

‘A tender’ means a written offer to supply goods, materials or services (which can include an offer received electronically).

4. Pre-Procurement Procedure

4.1 Before commencing a procurement process it is essential that a Responsible Procurement Officer has identified the need and fully assessed the options for meeting those needs. Consideration shall be given to the Council’s Procurement Strategy as appropriate.

4.2 Before undertaking the procurement, the Responsible Procurement Officer shall:

- consider all other means of satisfying the need (including recycling and re-use where appropriate);
- consider whether there is an appropriate framework agreement that should be used;

- establish an appropriate business case for the procurement;
- carry out an assessment of risks including procurement risks associated with the project.

4.3 *Well-being power*

Where the procurement is being undertaken using powers under Section 2 of the Local Government Act 2000 to achieve a social, economic or environmental well-being purpose, the Responsible Procurement Officer shall satisfy himself or herself that the use of the well-being power is appropriate and that the Community Strategy of the County Council, prepared under Section 4 of the Local Government Act 2000, has been taken into account. Note: The County Council's Community Strategy, a Vision for Somerset, was adopted by the County Council on 13 October 2004.

4.4 The Responsible Procurement Officer shall be responsible for ensuring that a proper record of compliance with these Contract Standing Orders is maintained and for ensuring that any appropriate entries are made in the Register of Contracts and the Disclosure Register maintained under contract standing order 11.

5. Call off Framework Agreements

5.1 Corporate framework contracts for supplies and services and works should be used where they exist regardless of value. County wide arrangements for routine supplies and services and departmental specific contracts, framework agreements and block contracts all fall within these definitions. Details of available framework agreements are available from the Corporate Procurement Unit.

5.2 The use of consortium contracts, such as OGC frameworks, should be considered by Responsible Procurement Officers when best value can be evidenced.

6. Term Contracts

6.1 The provisions of this part of Contract Standing Orders shall apply to framework agreements, agreements for strategic partnerships and to supply and service contracts where goods, materials or services are to be supplied on more than one occasion or by way of separate transactions over a specified period, and where the total consideration payable by the Council may reasonably be expected to exceed a threshold determined by the Corporate Director (Resources). Current thresholds may be found in Appendix 2.

6.2 Where it is proposed to enter into a contract, consideration should be given to its duration. It is recommended that all contracts should be re-tendered at three year intervals unless there is good reason not to.

6.3 Where that is the case, those reasons should be fully documented and there should be provision in the term contract that performance is reviewed at least three yearly to ensure that the terms of the contract are still being met.

7. Contracts where the Consideration is below Thresholds

7.1 Where a contract below the figures referred to in Contract Standing Orders 6.1 and 12.1 is entered into, or when a contract for Part B 'exempted' services is being entered into under the EU Procurement Processes, the spirit of Contract Standing Orders shall be followed and whenever practicable at least two competitive quotations or tenders shall be obtained. Refer to Appendix 1 and 2.

8. Special Cases

8.1 Care Services

Contracts entered into by the Council for the provision of community care services (as defined at Section 46(3) of the National Health Service and Community Care Act 1990) with voluntary organisations or persons providing such services professionally or by way of trade or business shall, if and to the extent that they require the service provider to accommodate or care for such persons or groups of persons as may from time to time be designated by the Council, be deemed to be contracts within the meaning and for the purposes of these Contract Standing Orders.

8.2 Sheltered Workshops – Article 19

A Corporate Director may reserve the right to participate in a contract award procedure, whether above or below EU thresholds, to economic operators which operate sheltered workshops or which operate sheltered employment programmes provided that he or she follows the appropriate contract award procedures set out in the Public Contract Regulations 2006.

8.3 For the purpose of paragraph 8.2 above, “sheltered workshop” means an establishment where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market, and “sheltered employment programme” means a scheme under which work is provided for disabled persons and where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market.

9. Selective Tendering from Scheduled Contractors

9.1 Corporate Directors may compile schedules of those Contractors who, in their judgment, are capable of tendering for and carrying out any contracts they are responsible for. Such schedules may be retained on a ‘rolling’ basis with applications for admission to the schedules being considered at any time as appropriate.

9.2 Any schedule compiled under 9.1 above shall show the type and value of contract for which the contractor is listed, and shall be open for inspection by any member of the Council or the public on request. Each Corporate Director shall ensure that any contractor who is included on a schedule shall be re-assessed for continued inclusion on that schedule at least once every three years.

9.3 Each of the Corporate Directors may suspend a Contractor from a schedule if he/she is satisfied that the Contractor cannot meet the terms of a contract, or proves unsatisfactory in some other way. Any such suspension and the reasons for it must be reported to the Corporate Director (Resources) as soon as possible and to the next meeting of the Procurement Board. The Procurement Board may, in its discretion, resolve to remove a Contractor from any schedule.

9.4 In relation to any contract at least four contractors on the schedule of contractors who are appropriate to the type and value of the work must be invited to tender.

9.5 Each Corporate Director shall provide the Corporate Procurement Unit with up-to-date copies of schedules compiled under the above paragraphs.

10 Exceptions to the Procedures

10.1 A contract may be entered into on behalf of the Council other than in accordance with Contract Standing Orders 6.1 or 12.1 above in the following circumstances:

- (i) in a proposed supply contract where there appears to the Responsible Procurement Officer to be only one supplier and no acceptable alternative;

- (ii) in a proposed supply contract where the Council has decided to standardise by buying from only one supplier, or where the Corporate Director concerned is satisfied that specialised materials or plant are required for which there is only a single source of supply;
 - (iii) in a proposed contract for the extension, addition to or maintenance of existing goods, materials or services where in the opinion of the appropriate Corporate Director this can be done satisfactorily by the original contractor or supplier. Before the appropriate Corporate Director enters into a contract as described in subclauses (i) – (iii) above he/she must certify on each occasion that the advantages and disadvantages of proceeding with a single supplier have been examined and recorded.
 - (iv) in a proposed contract for the urgent supply of goods, services or materials where the Corporate Director concerned is satisfied and has recorded that the normal tender process would prevent the supply of the required goods, services or materials
 - (a) within the necessary timescale, or
 - (b) subject to the approval of the Corporate Procurement Manager, on terms that are advantageous to the Council and that procurement in the manner proposed will achieve the service objectives of the procurement;
 - (v) in a proposed contract for the supply of used or second-hand goods or materials where the Corporate Director concerned is satisfied, having regard to the value of the proposed contract, that the market for such goods or materials is such that it would be unreasonable to tender, or where the time required to complete the tender process is likely to lead to the loss of opportunity to purchase a used or second-hand item;
 - (vi) the Corporate Director concerned and the Corporate Director (Resources) or his nominee are satisfied that there are proper service reasons for not tendering for the supply of goods, materials or services, and that there will be no financial disadvantage to the Council as a result of not so tendering;
 - (vii) where a contract for residential care, nursing care or other care is being entered into in exercise of the client's right of choice of service provider, or where a contract is being entered into for any other matter where the County Council is legally required to allow clients the right of choice of service provider.
- 10.2 All contracts let in accordance with Contract Standing Order 10.1 shall be recorded in the Disclosure Register which shall show the Contract Standing Order under which action has been taken and which in the case of Contract Standing Order 10.1 (i) - (vi) shall contain a statement of reasons of the appropriate Corporate Director.
- 10.3 A contract may also be entered into other than in accordance with Contract Standing Orders 6 or 12.1:
- (i) where the contract is for the execution of building or civil engineering works and the proposed contractor has been selected following a competitive process of comparative evaluation and has committed substantial resources to the design, financing, planning and co-ordination of the project on a partnership basis with the Council and on the understanding that the contract would be awarded to it on the successful completion of the planning phase of the project;
 - (ii) where the contract is awarded through a purchasing consortium of which the Council is for the time being a member; or
 - (iii) where the Head of Finance and the County Solicitor are satisfied on proper enquiry that there are special circumstances justifying the waiving of Contract Standing Orders and authorise such waiver in writing, provided that nothing in this Contract Standing Order shall prevent the Head of Finance and the County Solicitor (or either of them) from referring to the Executive Board any proposed waiver which in their opinion is particularly sensitive or is likely to prove particularly contentious. Details of any such waiver shall be recorded in the Disclosure Register.

11. The Registers

11.1 A Register of Contracts shall be maintained by the County Council's Corporate Procurement Unit and shall contain:

- (i) a record of every contract of the descriptions specified at Contract Standing Orders 5, 6.1 and 12.1 below awarded by the Council;
- (ii) a record of every contract awarded by the Council in compliance with the requirements of any Directive of the European Union;
- (iii) a record of every contract awarded by the Council where quotations and tenders were submitted by electronic means as specified in Contract Standing Order 19.4.

The Corporate Procurement Manager may determine that only contracts above a certain value need be included in the Register of Contracts.

11.2 The County Council's Corporate Procurement Unit should also keep a Disclosure Register containing:

- (i) a record of any action taken by a Corporate Director under Contract Standing Order 6.3, 10.1 (as required by Contract Standing Order 10.2) or under Contract Standing Order 18.5, 18.6, 18.7 and 18.8;
- (ii) a record of any action taken by the Head of Finance and by the County Solicitor (or by either of them) under Contract Standing Order 10.3 (iii) or by the County Solicitor under Contract Standing Order 17.3.

11.3 The Register of Contracts and Disclosure Register may be maintained in separate parts for separate types of contract or for different service areas as the Corporate Procurement Manager may determine.

11.4 The Registers shall be available for inspection by any County Councillor and by the public on request.

12. Tenders

12.1 Except as specified in Contract Standing Order 10.1 above, where the consideration payable under any contract may reasonably be expected:

- (a) to exceed a threshold determined by the Corporate Director (Resources) in the case of a contract for the execution of building or civil engineering works; or
- (b) to exceed a threshold determined by the Corporate Director (Resources) in the case of a supply or service contract under which the goods, materials or services the subject of the contract are to be supplied on a single occasion, or in the course of a single transaction the entire cost of which has been determined in advance; the contractor must be chosen by one of the following methods:-
 - (i) Open competitive tendering under Contract Standing Order 14;
 - (ii) Selective tendering by advertisement under Contract Standing Order 15;
 - (iii) Selective tendering from scheduled contractors under Contract Standing Order 9.

12.2 Current thresholds may be found in Appendix 2.

13. Tendering

13.1 All contracts over EU thresholds (see Appendix 1) must be tendered by one of the following methods:

- (i) open competitive tendering;

- (ii) selective tendering by advertisement (restricted method);
 - (iii) negotiated method.
 - (iv) competitive dialogue
- 13.2 For further details of the negotiated method and competitive dialogue contact the Corporate Procurement Unit or visit their Intranet site.
- 14. Open Competitive Tendering**
- 14.1 Tenders must be invited by an advertisement in at least one (and preferably more than one) local newspaper circulating in the area saying what the contract is for and specifying a reasonable closing date by which tenders must be received unless the appropriate Corporate Director is of the opinion that such an advertisement would not be to the advantage of the Council.
- 14.2 The advertisement must also appear in at least one appropriate trade journal where in the opinion of the appropriate Corporate Director this is likely to be to the advantage of the Council.
- 15. Selective Tendering by Advertisement**
- 15.1 An advertisement saying what the contract is for and asking for the names of contractors interested in tendering to be submitted by a specified date must appear in a local newspaper unless the appropriate Corporate Director is of the opinion that such an advertisement would not be to the advantage of the Council. The advertisement must also appear in an appropriate trade journal where in the opinion of the appropriate Corporate Director this is likely to be to the advantage of the Council. A copy of the advertisement may, at the discretion of the appropriate Corporate Director, be sent to all appropriate scheduled contractors under Contract Standing Order 9.
- 15.2 After the specified date, in addition to any invitation to tender issued to an internal trader (a service of the County Council trading as a business unit) at least three contractors suitable to undertake the work must be invited to tender, and if there are fewer than four suitable contractors then all those considered suitable must be invited to tender. If there is only a very small number of suitable contractors the Corporate Director should seek an exemption under clause Contract Standing Order 10.3 (iii).
- 15.3 For contracts over EU thresholds at least five contractors should be invited to tender. If there are fewer than six suitable contractors then all those considered suitable must be invited to tender.
- 16. Joint Procurement**
- 16.1 Any joint procurement arrangements with other local authorities or public bodies, including membership or use of purchasing consortia, shall be approved by the Corporate Director (Resources) or his nominee prior to the commencement of any procurement on behalf of the Council.
- 16.2 The appropriate Corporate Director may approve the use in such a joint procurement arrangement of the Contract Standing Orders adopted by the lead organisation or by the relevant partnership body in such joint procurement provided that he or she is satisfied that the Contract Standing Orders comply with legal requirements.
- 16.3 Reference should be made where appropriate to the Scheme of Officer Delegation and Financial Regulations.

17. Submitting and Opening Tenders

- 17.1 Every invitation to tender sought pursuant to Contract Standing Orders 6.1 and 12.1 must state that a tender will only be considered if it is received by the due date and time in a sealed, plain envelope with the word 'Tender' and the title of the contract written on it. There must be no mention of the sender's name or any other way of identifying the sender from the envelope. The invitation must state that the Council does not bind itself to accept the lowest or any tender. The appropriate Corporate Director must keep the envelope unopened, and after the time for receipt has expired such tenders shall be opened and recorded by the County Solicitor or by an officer authorised by the appropriate Corporate Director who has not been previously involved in the invitation to tender and forwarded as necessary to the appropriate Corporate Director for analysis.
- 17.2 Tenders received through e-sourcing are subject to special controls, and the advice of the Corporate Director (Resources) should be sought beforehand (see Contract Standing Order 19).
- 17.3 The County Solicitor having consulted the appropriate Corporate Director may at his absolute discretion permit consideration of a tender submitted other than in accordance with Contract Standing Order 17.1 provided:
- (i) that he is satisfied that it is in the best interests of the Council to do so;
 - (ii) that he is satisfied that the tenderer has not secured an advantage over the other tenderers by failing to tender in accordance with Contract Standing Order 17.1;
 - (iii) and that the decision to admit the tender is taken before the remaining tenders are opened. A record of the reason for permitting consideration of such a tender must be kept in the Disclosure Register.

The appropriate Corporate Director shall ensure that a record of the reason for permitting consideration of such a tender must be entered in the Disclosure Register.

18. Accepting Tenders

- 18.1 Except as detailed in the subsequent paragraphs of this Contract Standing Order, the appropriate Corporate Director may only accept the outcome providing the best value for money to the Council. This will be on the basis of the award criteria clearly defined in the invitation to tender process. The basic criteria will be:

- most economically advantageous offer (where considerations other than price apply);
- highest price if payment is to be received; or
- lowest price where payment is made by the County Council (where exceptionally no other considerations than price apply).

In the case of every contract, the Responsible Procurement Officer shall consider the desirability of verifying the financial standing of the proposed contractor as appropriate in the circumstances of the particular contract.

- 18.2 If the first criterion is adopted it must be defined by reference to sub-criteria. These subcriteria may only refer to relevant considerations. They must always include price but should also include whole life costing factors, where appropriate, for example:
- quality;
 - running costs;
 - technical merit;
 - delivery dates;
 - cost effectiveness;

- relevant environmental considerations;
- aesthetic and functional characteristics (including security and control features);
- safety;
- after sales services;
- technical assistance.

In appropriate cases, for example on social enterprise contracts, consideration may be given to adding a 'community benefit' criteria, but advice should always be sought in advance from the Corporate Procurement Unit.

18.3 Criteria must not include:

- non-commercial considerations specified in Section 17 of the Local Government Act 1988;
- matters which discriminate against suppliers from the European Economic Area or signatories to the Government Procurement Agreement.

18.4 The tenders must be scored objectively and criteria used which are:

- predetermined and listed in the invitation to tender document in the order of importance;
- strictly observed at all times during the tender process;
- reflect the principles of Best Value;
- be capable of objective assessment;
- be weighted by relative importance.

18.5 Subject to Contract Standing Order 18.6 the appropriate Corporate Director may approve the amendment of a tender after it has been received and before it has been accepted only in the following circumstances:

- (a) to enable the correction of a genuine error;
- (b) to make an alteration to the advantage of the Council provided that the alteration if made to all the tenders would not make any other tender the most financially favourable. A record of any such alteration must be kept in the Disclosure Register.

18.6 Where the Corporate Director considers it is in the best interests of the Council, he may negotiate with the lowest tenderer or the tenderer whose tender is being considered for acceptance under Contract Standing Order 18.7 below, with a view to reducing the tender, provided that particulars thereof and a statement of reasons therefore shall be entered in the Disclosure Register.

18.7 The appropriate Corporate Director concerned may accept other than the lowest tender where:

- (a) there is a material improvement in specification in contrast to the lowest tender and where either the spending department specifies the goods, materials or services with a higher specification or where the appropriate Corporate Director is of the opinion that by virtue of specification a tender other than the lowest tender represents the best value for money and should be deemed the most economically advantageous;
- (b) the goods, materials or services tendered for are not available for immediate supply and where in the opinion of the appropriate Corporate Director by reason of their non-availability another tender might reasonably be regarded as the most economically advantageous tender;
- (c) another tender offers the best value to the County Council in accordance with the principles of the Procurement Strategy;

All action taken under this Contract Standing Order shall be recorded in the Disclosure Register together with particulars and a statement of reasons therefore.

18.8 No negotiations with tenderers after the receipt of tenders shall take place except as authorised by the preceding paragraphs of this Contract Standing Order without the prior approval of the Council, appropriate Committee, Sub-Committee or Board and the fact that such negotiations have taken place shall be recorded in the Disclosure Register together with an indication of the reasons therefore.

18.9 A tender other than that providing best value for money for the Council as defined in this Contract Standing Order may be accepted where the Council, or any Committee or Sub-Committee or Board to which the power of acceptance has been delegated, considers such acceptance to be in the best financial interests of the Council or considers there are other special circumstances.

19. E-Procurement

19.1 The use of any electronic system to acquire supplies, works and services is regulated by these Contract Standing Orders.

19.2 A contract may be entered into other than in accordance with Contract Standing Orders 14, 15 and 9, where in the opinion of the appropriate Chief Officer, an e-marketplace is considered to be the most appropriate vehicle. The Corporate Director (Resources) must however be consulted on this beforehand and approve the form of procurement to be used.

19.3 Quotations and tenders may be submitted by electronic means provided that:

- evidence that the transmission was successfully completed is obtained and recorded;
- each tender submitted electronically is supplemented by an identical signed hard copy original submitted in the manner prescribed in the advertisement or the invitation documents before the tender date; and
- electronic tenders are kept in a secure folder under the control of an appropriate Corporate Director or the County Solicitor or an approved external consultant which is not opened until the deadline has passed for the receipt of tenders.

19.4 Where a specific form of procurement is used under this Contract Standing Order, details of the form of procurement shall be entered into the Register of Contracts by the appropriate Corporate Director.

20. Form of Contracts

20.1 Every contract entered into by the Council which is above a value of £50,000 must be in writing, and any contract which is of a lower value must be in writing if so required by the County Solicitor or by the Head of Finance. In addition, officers should have regard to advice issued by the Corporate Procurement Unit on the form of contracts.

20.2 Every contract which is required to be in writing by virtue of paragraph 20.1 above must either be made under the County Council's seal or be signed by two officers of the County Council.

20.3 For every contract consideration should be given to taking appropriate security for the due performance of the contract with the objective of securing the best financial interests of the council.

21. Corruption: Cancelling Contracts

21.1 Every contract required to be in writing must state that the Council can cancel the contract and recover any resulting losses if the contractor or his/her employees or agents with or without his/her knowledge:

- (a) does anything improper to influence the Council to award the contract. (In this respect the attention of employees of the Council is drawn to the County Council's Standards of Conduct.);

- (b) commits an offence under the Prevention of Corruption Act 1906 to 1916 or Section 117(2) of the Local Government Act 1972.

22. Compliance with Contract Standing Orders

- 22.1 When outside consultants or technical officers are employed to supervise the letting of contracts they must similarly follow Contract Standing Orders. Their contract for services must include this requirement.

23. Financial Limits

- 23.1 The Head of Finance shall revise periodically the financial limits in these Contract Standing Orders to reflect changes in the value of money, and submit any proposals for alterations to the next convenient meeting of the Executive Board for approval.

Contact Details

If you require further advice please contact the Corporate Procurement Manager, or County Solicitor.

APPENDIX 1 EUROPEAN UNION DIRECTIVES ON PROCUREMENT

The Public Sector Procurement Directive 2004/18/EC was implemented in the UK as the Public Contracts Regulations SI 2006 No. 5 in January 2006

To encourage healthy competition between suppliers from EU member states the European public procurement directives for supplies, services and works mandate specific rules and regulations for contracts above particular values, known as thresholds. It should be noted however that all public procurement, both above and below the EU thresholds is subject to the Treaty of Rome which requires that all contracts are let in a non discriminatory and transparent manner. For this reason contracts below the EU thresholds and above £15,000 in value must be advertised on the SCC Internet site

EU Thresholds

The actual values are based on an International Monetary Fund rate and the thresholds are transposed into £sterling every two years. The current values (from 31st January 2006) for local and regional authorities are:

	Supplies	Services	Works
Threshold	£139,893	£139,893	£3,497,313

Scope

There are exceptions to the scope of the Directives. For example, in respect of contracts for the provision of services, there are two separate lists Part A and Part B. In respect of "Part A Services" there is a full application of the rules whereas for "Part B Services" there is only a partial application of the rules. Most Health and Social Services will fall into Part B. The full list of Part A and Part B Services can be found in Schedule 3 to the Public Contracts Regulations 2006.

Key Requirements

Key requirements of the directives include advertising in the Official Journal of the European Union, publication of the criteria for selection, compliance with certain time limits in the tendering and award process, avoidance of nationalistic anti-competitive practices, and annual reporting to the Department of Trade and Industry.

Procurement Processes

The EU Directives allow four ways of letting a contract:

1. The open method whereby the contract is advertised and anyone can apply for the documentation and put in a tender.
2. The restricted method which is similar to our selective tendering method whereby a contract is advertised and contractors can apply to get onto the select list of tenderers who will be asked to submit their bids.
3. The negotiated method whereby the client organisation can negotiate with one contractor to achieve an acceptable contract. The negotiated method is very much the exception and can only be used in limited specified circumstances.
4. The use of competitive dialogue (introduced in the recently updated directives) which specifically permits dialogue between the contracting authority and contractors during the stages of the procurement process. This new procedure is aimed at large, complex contracts such as PFIs and PPPs. It enables contracting authorities to develop specifications with the input of contractors, and to assist contractors in developing tenders that are responsive to the specifications.

Key Changes in the new Directives

1. **Social and Environmental Issues**
There is greater clarity in the new Directives on the extent to which social and environmental issues can be given consideration during the procurement process, e.g. by using "green" specifications, production process standards and variants and by taking account of relevant quality and whole life cost issues at the award stage.
2. **Regulation of Framework Contracts**
This applies to situations where an authority is obtaining goods or services through a framework contract containing more than one supplier. Where the authority decides to hold a mini competition to ensure Best Value the new directive states that all suppliers who are capable of supplying the particular need must be invited to tender

3. **Mandatory Standstill Period between Decision to Award and Actual Award**
Once a decision on the award of contract has been made, no formal contract award may be made to the successful supplier until at least ten calendar days have elapsed. Immediately this ten day period commences, a Responsible Procurement Officer will notify the identity of the successful bidder to all the unsuccessful bidders and also, where applicable to all suppliers who submitted a Pre Qualification Questionnaire but were not selected to tender.

Further advice is available from the Corporate Procurement Manager, Caroline Adams. E-mail address: cadams2@somerset.gov.uk

APPENDIX 2 THRESHOLDS

Tenders

The value at or above which a contractor must be chosen by one of the methods identified in Contract Standing Order 12.1.

Contracts for the execution of building or civil engineering works. £140,000

Contracts for supply of services under which the goods materials or services the subject of the contract are to be supplied on a single occasion or in the course of a single transaction, the entire cost of which has been determined in advance. £50,000

Term Contracts

The threshold above which Contract Standing Order 6 applies. £100,000 provided that the annual expenditure is not expected to exceed £35,000 in any one year.

FINANCIAL THRESHOLDS TABLE

This table (which is provided for guidance) should be followed unless one of the exceptions in Contract Standing Order 10 applies.

Type of Contract	Total Value	Award Procedure	Shortlisting	Documentation / Audit Requirement
Any	Up to £5000	Two oral quotations	Officer	Retain evidence
One off contracts – supply of goods, materials or services Term contract – supply of goods, materials or services Works Contract – execution of building or civil engineering works	£5000 to £50,000 £5,000 to £100,000 £5,000 to £140,000	In addition to any other advertising, it is mandatory to place a notice on SCC internet site for all contracts above £15,000 Three written quotations or tenders	Officer	Invitations to quote and any quotations received, and a note (recorded at the time of receipt) of any oral quotations received A written record : <ul style="list-style-type: none"> • Of any exemptions and reasons for it • Of the reason if the lowest price is not accepted • Of award criteria other than price Written records of communications with the successful contractor
One off contracts – supply of goods, materials or services Term contract – supply of goods, materials or services Includes <ul style="list-style-type: none"> • Renewable or period contracts • Framework arrangements • Partnership arrangements • Call-off contracts Works Contract – execution of building or civil engineering works	£50,000 to £144,370 £100,000 to £144,370 £140,000 to £3,611,318	a) Invitation to tender by advertisement through an open competitive tendering or selective tendering process b) Selective tendering from scheduled contractors (approved lists)	Officer Line Manager	<ul style="list-style-type: none"> • Steps prior to purchase • Pre tender market research • Method for obtaining bids • The award criteria • Tender documents sent to and received from bidders • Evaluation of tenders against the criteria • Any decision to award or not award the contract and the reasons for this • Any exemption and the reasons for this • Clarification and post tender negotiation • Contract documents • Post contract evaluation and monitoring • Written records of communications with bidders and with the successful contractor throughout the period of the contract

One off contracts – supply of goods, materials or services	EU Threshold £144,371 and above	Normally the EU procedure must be followed. Notify the Corporate Procurement Unit	Officer Line Manager Major contracts may require Corporate Director/Member involvement in the shortlisting process	<ul style="list-style-type: none"> • Steps prior to purchase • Pre tender market research • Method for obtaining bids • The award criteria • Tender documents sent to and received from bidders • Evaluation of tenders against the criteria • Any decision to award or not award the contract and the reasons for this • Any exemption and the reasons for this • Clarification and post tender negotiation • Contract documents • Post contract evaluation and monitoring • Written records of communications with bidders and with the successful contractor throughout the period of the contract • A record of the procurement in accordance with the Public Sector Procurement Directive 2004/18/EC
Term contract – supply of goods, materials or services	EU Threshold £144,371 and above			
Includes <ul style="list-style-type: none"> • Renewable or period contracts • Framework arrangements • Partnership arrangements • Call-off contracts 				
Works Contract – execution of building or civil engineering works	EU Threshold £3,611,319 and above			

Calculating Contract values

The contract value estimation is key in order for the thresholds and process to be properly adhered to.

For works contracts the spend must be aggregated for the full contract value. For example, if the spend with a particular supplier occurs on multiple transactions then this must be aggregated to a total estimated value

For services, it depends on the value of the total commitment given at the point of awarding the contract. Therefore if there is an intention to award a contract for more than one year then the total value should be the aggregated value for the total period of the contract. For an indefinite contract period beyond two years then the estimated value for 48 months should be used