

# **B - Contract Standing Orders (Contracting Procedure Rules)**

Made under section 135 of the Local Government Act 1972

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## **Definitions**

In these Contract Standing Orders the following words and expressions will have the following meanings assigned to them:

“**1972 Act**” means the Local Government Act 1972.

“**Advertising**” means an advertisement placed in the Official Journal of the European Union or such other publication that may be pertinent to a particular procurement exercise.

“**Agent**” means any external individual or organisation acting on behalf of the Council.

“**Senior Leadership Team Officer**” means any Senior Leadership Team Officer for the time being of the Council or such officer as they may duly authorise to act on their behalf. Any such delegated authority must be documented by the relevant Council Service and be acknowledged by the relevant Officer in accordance with the Scheme of Delegation.

“**Contracting Authority**” shall mean Somerset County Council or any entity in which Somerset County Council has effective control over.

“**Council**” means Somerset County Council.

“**Day**” means a calendar day unless otherwise specified.

“**EU**” means the European Union.

“**Framework**” means a framework agreement within the meaning of Directive 2004/18 EU.

“**In-house Provision**”: This is considered to be provision over which the Council has a similar level of control over resources as it would do if the Council operated the service directly.

“**OJEU**” means the Official Journal of the European Union, which publishes all public sector tenders breaching the EU thresholds across the European Union.

“**OJEU Tender**” means a formal sealed bid procurement process that must comply fully with the requirements of the EU Consolidated Public Procurement Directive because the total aggregated value exceeds the value thresholds detailed within the Directive.

“**PPP**” means Public/Private Partnership.

“**PQQ**” means the Pre-Qualification Questionnaire used to assess applications for inclusion in the shortlist of applicants who will be invited to submit a final proposal in every Restricted Procedure.

“**Procurement**” means the function responsible for acquiring by purchase, lease or other legal means, the goods, works and services used by the Council to discharge its functions in an effective, efficient and economic manner.

The **procurement process** spans the whole life cycle of the procured goods, works or services – from the initial concept and definition of business needs, through to the end of the useful life of an asset or the end of a service contract.

“**Procurement Directive**” means the EU Consolidated Public Procurement Directive.

“**The Regulations**” means the Public Contracts Regulations 2006, as amended.

“**Relevant Contract**” means a contract to which these Contract Standing Orders apply.

“**Remedies Directive**” means the EU Remedies Directive.

“**RFQ**” means a Request for Quotation, where potential suppliers, providers or contractors submit legally binding proposals for Supplies, Services or Works without the need to complete a formal, sealed bid tender exercise.

“**Services**” means Services as defined in the EU Consolidated Public Procurement Directive

“**Commercial and Procurement Team**” (“CPT”) are for the purposes of these Contract Standing Orders automatically an agent of the Council. CPT undertakes procurement activity on behalf of the Council subject to their contractual obligations.

“**Standstill Period**” means the minimum 10 day period between the notification date of unsuccessful tenderers and the date of contract award.

“**Supplies**” means Supplies as defined in the EU Consolidated Public Procurement Directive

“**Tender**” means a candidate's proposal submitted in response to an Invitation to Tender

“**Third Party Funding Source**” means an organisation or entity which provides funding to the Council for the purposes of the delivery of a given object.

“**Threshold**” means the total aggregated value limits as defined within:

- The EU Consolidated Public Procurement Directive in the first instance;
- Somerset Council Contract Standing Orders, where the EU Consolidated Public Procurement Directive does not apply as a result of OJEU thresholds not being exceeded.

“**Total Aggregated Value**” means the total value of a purchased good, works or service over the duration of a contract.

“**Works**” means Works as defined in the EU Consolidated Public Procurement Directive

## **SECTION A - GENERAL INFORMATION**

### **1. Contracting Authority**

Somerset County Council is the Contracting Authority. This means that all contracts are let on behalf of the Council as a whole and that no Service, Team, Unit or other part of the Council has the legal capacity to enter independently into any contract.

Somerset County Council remains the Contracting Authority when entering into collaborative contracts where the Council procures goods, services or works jointly with other public sector organisations but may not complete the procurement process.

The Leader of the Council, the Cabinet, the Pensions Committee and the Chief Executive are responsible for putting in place appropriate Schemes of Delegation to enable tenders to be accepted and contracts to be awarded.

The administration, monitoring and ensuring compliance of these Standing Orders shall be the responsibility of the Business Development Director.

### **2. Date of Commencement**

These Contract Standing Orders define the rules and procedures to be adopted when undertaking any procurement activity on behalf of the Council and are effective from 30 October 2013. All procurement processes commencing from that date will observe the rules contained within these Contract Standing Orders.

### **3. Extent and Application of Contract Standing Orders**

These Contract Standing Orders are made under Section 135 of the Local Government Act 1972.

These Contract Standing Orders will apply to all contracts for the procurement of all goods, services and works by the Council, including, ad hoc, one-off requirements, and they will be applied by any employee or agent of Somerset County Council undertaking any procurement activity on behalf of the Council.

For the purpose of clarification the definition of contract shall include any legally binding arrangement made by or on behalf of the Council, including by any LEA maintained school, with an external contractor for the carrying out of works or the supply or disposal of goods or materials or the provision of services.

The Contract Standing Orders apply to all public procurement expenditure by the Council irrespective of the funding source (except where there are specific terms and conditions attached by a Third Party Funding Source which determine the method in which the contract is to be let) and includes expenditure that has been devolved in any way.

Compliance with Standing Orders is vital to demonstrate probity in the procurement process. Equally important is the delivery of economy, efficiency and effectiveness through competition and the avoidance of practices that may restrict, distort or prevent competition. The Standing Orders set out minimum standards.

The only exemptions to these Contract Standing Orders are those detailed in 4 below, Exemptions from the Application of Contract Standing Orders.

#### **4. Exemptions from the Application of Contract Standing Orders**

- Any contract of direct employment
- Any contract relating to the disposal or lease of land and / or buildings where offers have been sought and a closing date fixed.
- Any contract declared to be exempt because the exemption is justified by special and exceptional circumstances.
- An immediate need is created by a sudden, unforeseen, real and demonstrable emergency that requires immediate action to protect the interests of the Council.
- Pension Fund administration and governance arrangements are separate from main Council affairs and consequently not all of the Contract Standing Order requirements to apply to the fund. Exclusions will in the main only apply to approvals and reporting whilst all other principals surrounding the Contract Standing Orders and statutory requirements will remain. Where exemptions apply, these will be stated in the Pension Fund Scheme of Delegation and updated and approved periodically, concurrent with these Contract Standing Orders.

**Such exemptions are not necessarily exempt from the application of the specific requirements of the EU Consolidated Public Procurement Directive and Public Contracts Regulations 2006, as amended, where they apply.**

Lack of sufficient planning and / or internal process delays will not constitute special, exceptional or emergency circumstances.

#### **5. Reporting on Exemptions from the Application of Contract Standing Orders**

Advice on any proposed exemption from Contract Standing Orders should be sought from the Business Development Director.

The appropriate Senior Leadership Team officer shall apply to the Business Development Director and the Monitoring Officer before taking any action that binds the Council. Any such exception must be reported and recorded by the Business Development Director, including the reasons that fully justify the exception.

The appropriate Senior Leadership Team officer will normally be the officer that holds the budget for the requirement. Where there is a technical or competency issue, the appropriate Senior Leadership Team officer will be the one with responsibility for the professional aspects of the requirement.

In such an event, the requirement to comply with the EU Consolidated Public Procurement Directive and the Public Contracts Regulations 2006, as amended, remains.

## **6. Best Value**

The Council has a duty to secure best value. Effective procurement is one of the tools available to deliver best value.

Best value in procurement is the optimum combination of price and quality identified through the Most Economically Advantageous Tender (MEAT).

In this context, price means the whole life cost or total acquisition cost of any requirement, not simply the price paid on acquisition. The Price may include the purchase price and the costs of the purchase to pay process, operation, maintenance and disposal.

In this context, quality means the measurable qualities of a proposal, and need not refer to a subjective view of high or low quality, but simply the quality that is right for the Council.

Every procurement requirement will be awarded on the basis of the Most Economically Advantageous Tender. No procurement requirement will be awarded solely on the basis of price.

Advice on the application of whole life cost and / or total acquisition cost should be sought from CPT.

## **7. Authority to Undertake Procurement Activity**

All employees whose role involves any procurement activity will complete a Procurement Skills Analysis Questionnaire, available from the Business Development Director. The Questionnaire identifies appropriate training requirements. All such employees will undertake appropriate training in, as minimum standard, compliant and best practice procurement. Additional and specialist training will be required in more specialist procurement roles.

Once the appropriate training has been completed, employees undertaking procurement activity as part of their job role will be:

- Certified as a “procurement officer”
- Approved to complete specific procurement activities
- Included on the Procurement Officer Authority List
- Required to sign a certificate indicating that they have read and understood Contract Standing Orders and accepted the requirement to comply with the Contract Standing Orders at all times

Employees who have not undertaken training, are not certified procurement officers and are not included on the Procurement Officer Authority List are not permitted to undertake procurement activity.

## **8. Collaborative Procurement**

Collaborative procurement arrangements are encouraged where these can demonstrate best value to the Council. Collaboration can take place through established consortia or through collaboration on one-off requirements.

Where the Council takes the lead procurement role in such arrangements, these Contract Standing Orders will apply to each procurement process carried out under the collaborative arrangement.

Where another public sector organisation takes the lead procurement role, its Contract Standing Orders, or equivalent, will apply.

All procurement activity carried out in collaboration is required to meet the demands of the EU Consolidated Public Procurement Directive.

### **8.1 Formal Collaborative Arrangements**

Where the Council enters into formal joint buying or consortia purchasing arrangements, the related agreement and procurement strategy must protect the Council to a level proportionate to the risk involved, whilst at the same time providing the basis for a partnering approach and delivery of best value.

As a minimum, the agreement should clearly state:

- the nature and extent of the arrangement
- legal responsibilities
- arrangements for governance, accountability and dispute resolution
- the exit strategy
- the auditing arrangements
- the process for the induction of new partners.

### **8.2 Informal Collaborative Arrangements**

Where the Council enters into informal and ad-hoc joint buying or consortia purchasing arrangements where no strategic agreement exists, the Council must be protected to a level proportionate to the risk involved, whilst at the same time providing for flexibility and delivery of best value. As a minimum this will typically be compliance to all procurement legislation and regulation such as the EU Consolidated Public Procurement Directive and the ability to demonstrate delivery of best value.



### 8.3 Council Requirements

Where Somerset County Council is not leading the procurement process, the lead authority / agency is required to comply with all relevant procurement legislation and with its own internal rules in undertake the procurement exercise.

The appropriate Officer within Somerset County Council who is dealing with the contract is required to satisfy themselves, as far as it is feasible to do so, that this requirement is met.

In addition, where Somerset County Council is not leading the procurement process, Officers are required to ensure that the following clauses of Somerset Council's Contract Standing Orders are applied.

- Contract Monitoring and Reporting – Proposed Procurement Requirement
- Contract Monitoring and Reporting – Contract Award

Where the Council seeks to join an existing Framework then a due diligence exercise should be undertaken to ensure that the Framework has been properly procured in accordance with the relevant legislation and with particular reference to the ability of the Council to join the Framework under the terms of the original Advertisement.

### 9. Part B Services

Part B services, as defined in Schedule 3 of the Public Contract Regulation 2006 are not subject to all of the requirements of the EU Consolidated Public Procurement Directive.

The procurement of Part B services excluding care placements and general care related agreements are not exempt from Contract Standing Orders and therefore must demonstrate competition and best value.

### Social Care

Social Care contracts must be procured in accordance with EU public procurement directives and UK regulations but are otherwise exempt from CSO 21 save for the requirement to demonstrate obtaining value for money and for the requirement to consider the EC Treaty principles where such an opportunity would be of potential interest to economic operators in other Member States. In such cases a proportionate level of advertising should be conducted

### 10. Council Policy Objectives

Best practice and compliant procurement are some of the drivers to achieving Council policy objectives. As a result, the objectives will be considered in every procurement process and, where appropriate, incorporated into the contract strategy, evaluation model and terms and conditions of contract.

## **11. Sustainable Procurement**

Sustainable Procurement incorporates the achievement of environmental, economic and social outcomes through procurement processes.

Sustainable Procurement outcomes, where relevant to the subject of the contract, should be incorporated into every procurement process.

Such outcomes should be incorporated in a way which does not result in the inappropriate exclusion of potential suppliers, or in anti-competitive behaviour on the part of the Council.

Sustainable outcomes are not used as the sole criteria for award of contract.

## **12. Freedom of Information Act 2000**

There is a presumption that contractual information should be made available for disclosure if requested. However, officers should be aware of the potentially anti- competitive implications of disclosing detailed contractual information in the period around a procurement process taking place.

Guidance and advice is available from the Information Compliance Officer, Legal Services and the Business Development Director.

## **13. Community Right to Challenge**

The Community Right to Challenge (CRTC) means community organisations can submit to Local Authorities an Expression of Interest to run local services. This right is granted under the Localism Act. If an Expression Of Interest is accepted by Somerset County Council this will trigger a procurement exercise.

More information, guidance and templates can be obtained from: [www.somerset.gov.uk/crtc](http://www.somerset.gov.uk/crtc)

## **14. Appointment of Agents to Act on Behalf of the Council**

It is a condition of appointment that any consultant, architect, surveyor, engineer or any other external agent appointed to act on behalf of the Council and / or who is responsible for completion of a procurement process and / or the supervision of a contract on the Council's behalf will:

- Comply in full with the requirements of the EU Consolidated Public Procurement Directive, Public Contracts Regulations 2006, Somerset Council's Contract Standing Orders, all relevant legislation and all Council policies.
- Provide evidence that they are trained in and competent in public procurement.
- Ensure that any modification to the procedure for opening tenders is approved in advance by the Business Development Director in consultation with the Monitoring Officer.

- Produce to the appropriate Senior Leadership Team officer or nominated Council Officer on request all relevant records and documentation related to the contracted service and / or contract being supervised on behalf of the Council.

On completion of the contract service and / or contract, provide to the appropriate Senior Leadership Team officer all relevant records and documentation related to the contracted service and / or contract supervised on behalf of the Council.

Every appointment of a consultant, architect, surveyor, engineer or any other external agent to act in any capacity on behalf of the Council is required to have a contract condition that ensures that copyright in respect of anything created or completed by that external agent in relation to the appointment will be the property of the Council.

Where issues arise in respect of copyright, Officers are required to seek guidance and advice from Legal Services.

## **15 Breach of Contract Standing Orders**

### **15.1 Reporting and Disciplinary Action**

Any non-compliance to or breach of Contract Standing Orders will be reported immediately on discovery to the Business Development Director, the Monitoring Officer and the Section 151 Officer.

Failure to report any known non-compliance or breach may result in disciplinary action being taken against the employee who failed to report the non-compliance or breach.

The Section 151 Officer will undertake an investigation where deemed necessary. The investigation findings will be reported to the Business Development Director, the relevant Senior Leadership Team officer, the Monitoring Officer, the Section 151 Officer, the Chief Executive, the Leader of Council, Cabinet Members and Cabinet as appropriate.

The Senior Leadership Team officer and / or Section 151 Officer / Chief Executive will refer the investigation findings to the Human Resources and Organisational Development Director in order that the appropriate disciplinary action can be taken where a serious or repeated breach of Contract Standing Orders is identified.

### **15.2 Contractual Implications**

Any non-compliance or breach of Contract Standing Orders can seriously impact upon the legal standing of the contract and can increase the ability of unsuccessful bidders / tenderers to seek redress through the courts.

## **16. Review of Contract Standing Orders**

Contract Standing Orders will be reviewed and updated as required by changes to procurement legislation and regulation or on an annual basis where there has been no change to procurement legislation and regulation.

The Business Development Director is responsible undertaking any review and reporting proposed changes, in consultation with the Section 151 Officer and Monitoring Officer, to the County Council for approval.

Contract Standing Orders may be varied or revoked by the Council at any time following a resolution passed upon notice duly given in terms of those Standing Orders (not Contract Standing Orders) that regulate the meetings and proceedings of the Council.

## **SECTION B – LEGAL FRAMEWORK**

### **17. Compliance with Legislation and Contract Standing Orders**

The Council's Contract Standing Orders comply fully with the requirements of the EU Consolidated Procurement Directive, which takes precedence over national and local procurement legislation and regulation.

The Council's Contract Standing Orders comply fully with the Public Contracts Regulations 2006, as amended, which take precedence over local procurement regulations.

Every contract entered into or order placed by or on behalf of the Council will comply fully with the requirements of the EU Consolidated Public Procurement Directive, the Public Contracts Regulations 2006, as amended and these Contract Standing Orders.

The EU legislation identifies specific thresholds of spend to which the full processes detailed within the Directive apply. These thresholds are revised every two years. Aspects of the EU legislation apply to every procurement process, not simply those which breach the thresholds.

Therefore every procurement process undertaken on behalf of Somerset County Council will comply with the requirements of the EU procurement legislation where such requirements apply.

These Contract Standing Orders comply in full with the requirements of the EU Directive, EU Law, EU Public Procurement Law, United Kingdom legislation and the Public Contracts Regulations 2006, as amended.

### **18. EU Directives**

Any failure to comply in full with the requirements of the Directives can result in the Council becoming subject to Court action and / or enforcement action by the European Union. Failure to comply can adversely affect access to EU funds available to the Council and can result in the repayment of funds previously allocated.

The EU Remedies Directive allows for additional penalties in the event of the Council being found to have failed to comply with the Procurement Directive. These penalties now include:

- Prohibition from entering into a contract
- Shortening of contract terms

- Fines when a complaint is upheld
- Contract termination

In addition, whenever legal proceedings relating to a contract award decision are commenced by aggrieved tenderer, tender processes are required to be suspended.

## 19. Case Law

There is a growing body of case law relating to public procurement, as public policy and regulation has eased access to legal remedies for unsuccessful applicants for public contracts. Some of this case law has had a significant impact on procurement procedure.

All available model contract documentation held by the CPT, will be updated to meet new legal requirements arising from case law. Therefore any Officer undertaking procurement activity is required to use only the current version of the model documents, as available on Pro Contract.

## SECTION C - PLANNING A PROCUREMENT PROCESS

Detailed advice is available from CPT, Procurement Handbook and within Pro Contract.

## 20. Contract Value and Aggregation

Contract value is calculated as the Total Aggregated Value of the requirement across the Council over the contract term, exclusive of VAT.

Officers are required to consider and include the value of similar requirements in other parts of the Council when calculating a contract value.

There are no exceptions to the application of the aggregation rule.

## 21. Thresholds

See the table below for the processes to be adopted according to the value of the contract:

<b>Procurement Requirement</b>	<b>Value</b>	<b>Procurement Process</b>
All requirements	less than or = £10,000	Section H, CSO applies.
	greater than £10,000	As above plus requirement to liaise with Strategic Manager – People/Place or Business (depending on spend area)
Goods and Services <sup>1</sup>	Between £25,000 and £130,000	RFQ process

<b>Procurement Requirement</b>	<b>Value</b>	<b>Procurement Process</b>
Goods and Services	Above £130,000	OJEU tender process is required.
Works	From £25,000 and up to £130,000	RFQ process is required.
Works	Above £130,000 to £3,750,000	Tender process without OJEU Notice is required
Works	Above £3,750,000	OJEU tender process is required

## **22. Timescales**

All Tender timescales are required to respect the timescales set out in the Procurement Directive.

The timescale from advertising an RFQ opportunity to the deadline for the receipt of completed proposals should not be less than 21 calendar days. Bidders must receive sufficient time to complete their bids, and therefore, for more complex requirement, this minimum 21 day period should be extended.

## **23. Framework Agreements**

Framework Agreements are most suited to contracts where:

- The Council can benefit from on-going competition throughout the contract term
- The quantity to be purchased is variable and / or unknown over the contract period
- There is a significant and competitive market to provide the required good, services or works

Framework Agreements may be awarded to a sole supplier or to 3 or more suppliers. Where multiple suppliers are awarded a contract, the process of selecting one supplier at the point of purchase should be clearly stated in the RFQ / Tender documentation.

Framework Agreements are generally limited to a maximum contract period of four years. Further guidance is available from CPT and in the Procurement Handbook.

## **SECTION D - UNDERTAKING A PROCUREMENT PROCESS**

### **24. Contract Monitoring and Reporting – Proposed Procurement Requirement**

All proposed procurement requirements with a value of over £25,000 will be reported through using a Non Key Decision Report

No procurement process for requirements with a value of over £25,000 will commence before the requirement has been countersigned by the appropriately empowered officer (or higher) as set out in the Council's Scheme of Delegation.

### **25. Advertising**

All contract opportunities valued at over £10,000 are required to be advertised by the Commercial and Procurement Team through the Council's e-Procurement tool Pro Contract, unless prior recommendation or agreement is obtained from either the Head of Commercial and Procurement or the Strategic Manager Procurement.

All Relevant Contract opportunities are required to be advertised in OJEU.

Contract opportunities below £25,000 in value should be considered for Advertising where this will support the Council's policy objectives and the exercise can demonstrate best value.

### **26. Confidentiality of Tender and RFQ Proposals**

During the period between the opening of proposals and / or tenders and the award of contract, all details of the proposals submitted must remain secret and be treated as confidential. It is the responsibility of those involved in the process to ensure complete confidentiality during this period.

**The requirement for confidentiality during this period applies to any external agent acting on behalf of the Council.**

**Failure to meet the confidentiality requirements will be reported to the Section 151 Officer, Internal Auditor, the Business Development Director, and the Monitoring Officer and may result in disciplinary action.**

### **27. Information and Data**

Officers must take all reasonable steps, including incorporation of clauses into agreements with suppliers, to ensure that the Authorities obligations and risks in respect of Information and Data are considered, and indemnities are sought where appropriate. More information and guidance can be obtained from the guidance notes to these Contract Standing Orders or the Information and Governance Manager

## **28. Evaluation of Proposals**

Evaluation of proposals must be based on quality and whole life cost or total acquisition cost, not price alone.

Evaluation of proposals must be completed using the Price / Quality weighting and individual evaluation criteria and scorings agreed during the planning stage completed prior to the commencement of the process and detailed in contract advertisements and documentation.

All criteria, sub-criteria and scoring must be detailed individually so that all bidders / applicants know what scores are attached to each criteria area.

Weighting and criteria must not be changed once agreed and published and must be applied consistently across all proposals

Records are to be kept of positive and negative reasons for scores, and a record made of the characteristics of each bid, as agreed by the Evaluation Panel. This information will be sent to rejected bidders / tenderers once a contract has been awarded.

The model used to evaluate proposals must be a Prior Overall Weighting (POW)(1) model or equivalent evaluation tool to ensure transparency and accountability in the event of a challenge or complaint.

Where Pre-Qualification is required, the evaluation criteria used to pre-qualify applicants must not be used again in the final evaluation of proposals, as evaluation criteria can only be used once in any procurement process.

For the evaluation of construction and civil engineering proposals, in addition to the above, the appropriate discipline principles, guidance and industry good practice in force at the time of the requirement must be used for the examination and evaluation of proposals.

## **29. Waivers**

Whilst the requirements of these Standing Orders are intended to be followed in respect of all Relevant Contracts, subject to the paragraphs below, the requirement to undertake a competitive tendering / procurement process may be waived by the Business Development Director in the following highly exceptional circumstances:

- (a) in the case of a proposed contract where reasonably it appears to the Senior Leadership Team officer that there is only one supplier and where no reasonably satisfactory alternative is available;
- (b) in the case of a proposed contract where the Senior Leadership Team officer is satisfied that specialised materials or plant are required for which there is only a single source of supply;
- (c) in the case of a proposed contract for the extension of an existing contract where in the opinion of the Senior Leadership Team officer this can most satisfactorily be performed by the original contractor, provided that the existing contract contains a provision to the effect that it may be extended and that the extension is limited to a period proportionate to the original contract term, see Contract Standing Order 44;



- (d) in the case of a proposed contract for the supply of goods or services which are required as a matter of urgency to meet the operational needs of the Council where the Senior Leadership Team officer is satisfied that the normal tender process would prevent the supply of the required goods, services or materials within the timescale necessary to avoid harming the interests of the Council or people residing (temporarily or permanently) or conducting business in Somerset;
- (e) in the case of a proposed contract for residential care, nursing care or other care which 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 Council is legally required to allow the client the right of choice of service provider.

All contracts let in accordance with Standing Order 27 (Waivers) shall be recorded by the Business Development Director in the Disclosure Register, which shall show the relevant reason under Standing Order 27 which the waiver has been granted, contain a written statement of the reasons for the waiver and details of the evidence (including, if appropriate, market testing) upon which the conclusion of the Senior Leadership Team officer is based and be signed and dated personally by the Business Development Director.

Before a contract is let in any of the circumstances described under Standing Order 27 (Waivers), the Business Development Director must certify that the advantages and disadvantages of proceeding with a single supplier have been examined and recorded and any evidence relied upon has been retained on the procurement file.

Before a contract is let in accordance with Standing Order 27, the value of which exceeds £50,000, the Business Development Director must consult with and obtain the agreement of the Section 151 Officer. Where the value of such contract exceeds £100,000 the Business Development Director must also involve the appropriate Cabinet Member in accordance with the requirements of the Cabinet Scheme of Delegation.

No contract may be let in accordance with Standing Order 27 to which the EU Procedure applies, regardless of whether, in the case of a contract for the provision of services, it is in respect of Part A or Part B services.

### 30. Approval to Accept

Approval to accept a proposal or Tender can only be given as follows:

<b>Total Aggregated Contract Value</b>	<b>Approval to Accept</b>
<b>£5,000,000 or greater</b>	<b>Cabinet or, in case of urgent business need, the Leader.</b>
<b>£500,001 - £4,999,999</b>	<b>Relevant SLT officer(s) or Cabinet Member(s).</b>
<b>£250,001– £500,000</b>	<b>Officer Scale 6 or above</b>
<b>£25,001 – £250,000</b>	<b>Officer Scale 8 or above</b>
<b>£10,000 – £25,000</b>	<b>Officer Scale 13 or above</b>
<b>Less than £10,000</b>	<b>All officers</b>

No contract can be awarded before approval to accept has been sought and obtained, as outlined above.

Prior to award - in addition to simply reporting the contract, if there is a variance of greater than 20% between the estimated value as previously reported under CSO 24 and the actual tendered sum then the reasons for the difference must be explained at the same time as reporting the award of the contract

### 31. Award of Contract

Every Contract shall be signed on behalf of the Council by 2 officers one of whom shall be the Authorised Officer or any senior lawyer in the employment of the Council who is duly authorised by the Council for the purposes of this Standing Order under the Scheme of Delegation for Officers.

Every works Contract which exceeds £250,000 in value shall be sealed with the Common Seal of the Council.

### 32. Mandatory Standstill Period

A Standstill Period must be applied to all contract award procedures for all tenders and RFQs with a Total Aggregated contract Value of more than £130,000 for Goods and Services, and £3,750,000 for Works.

A Standstill Period should be considered for all contract awards (Public Contract Regulations 2006).

The minimum period between the date that unsuccessful bidders receive notification that their bid has not been accepted and the date that the contract is to commence shall be that prescribed by the regulations.

Rejection Letters are required to contain the following specific information:

- Full details of the contract award criteria, mirroring the details contained in the tender documentation
- The name of the winning bidder / tenderer(s)
- The total scores that the winning bidder / tenderer and the rejected bidder / tenderer received
- A statement on the reasons for the contract award decision, which must include the characteristics and relative advantages of the winning tender / bid
- A Precise Statement on either:
  - When the Mandatory Standstill Period will end (which will be at midnight on the 10<sup>th</sup> day after unsuccessful bidders / tenderers receive rejection letters and will be a working day)
  - Or the date before which the Council will not enter into a contract (the formal contract award date)

If appropriate, Rejection Letters are also required to include the details of any reasons why the rejected bidder / tenderer did not meet the technical specifications

A full debrief will be offered to any bidder / tenderer and if requested will be provided within the prescribed timescales.

Contract cannot commence within the Standstill Period.

### **33. Contract Monitoring and Reporting - Contract Award**

Once the Approval to Accept has been received and the contract has been awarded, the contract will be reported to the Business Development Director using the Contract Monitoring and Reporting Form.

### **34. Tender File**

On completion of the RFQ or Tender process, all related documentation will be filed in a master file and retained for a period appropriate to the contract.

For standard goods and services the retention period will typically be the contract period plus one year, or the period of warranty cover, whichever is the greater.

For more complex goods and services contracts and for works contracts, the retention period may be significantly longer in order to deal with any long term contractual issues

## **SECTION E - TENDER AND RFQ DOCUMENTATION**

### **35. The Use of Standard Documents**

Standard documents for the procurement of goods and services are maintained and updated by the Business Development Director. These are available for certified procurement officers and held on Pro Contract.

Officers are required to use the current versions of standard documents available on the Intranet for each procurement process undertaken.

Not all of the Contract Terms and Conditions contained within the standard documents may be appropriate to the contract requirement and some may therefore be deleted. This is subject to Clause 37 below and subject to consultation with Legal Services and the Business Development Director.

The Contract Terms and Conditions contained within the standard documents may be insufficient to the contract requirement and may be added to or developed further, subject to consultation with Legal Services and the Business Development Director.

Guidance and advice on the appropriateness of the standard Contract Terms and Conditions should be sought from Legal Services and / or the Business Development Director prior to any amendment being made.

Where a variation is needed to a standard document then consultation should take place with the appropriate Legal Officer or if none is available with appointed external legal advisers.

### **36. Pre-Qualification Questionnaires (PQQs)**

Where a Restricted process is being applied, the Standard PQQ, available on Pro Contract, should be used as a basis for the issued PQQ.

### **37. Standard RFQ Documentation – Goods and Services**

Any RFQ Pack is required to include:

- SCC Contract Terms and Conditions
- Specification Schedules
- Pricing Schedules
- Commercially Confidential Information Schedules
- Quotation Completion Details

### **38. Standard Tender Documentation – Goods and Services**

Any Tender Pack is required to include:

- Instructions to Tenderers
- SCC Terms and Conditions
- Form of Tender
- Certificate of Non-Collusion
- Method Statements
- Delivery Schedules
- Specification Schedules
- Specification Compliance Schedules
- Pricing Schedules
- Commercially Confidential Information Schedules
- Returned Documentation Checklist

Where an Open Procedure is being conducted, a Tender Questionnaire is also to be included in the Tender Pack.

### **39. Mandatory Clauses**

The following clauses from the standard Contract Terms and Conditions may not be deleted from the documents, and are to be included in all contracts for goods and services and all works contracts:

- No assignation of the contract without the written consent of the Council.
- No sub-contracting of the contract without the written consent of the Council.
- Cancellation in the event that gratuities, inducements or any other type of consideration in relation to the contract are offered to an employee or member or agent of the Council.
- Compliance with all relevant legislation, including:
  - The Equalities Act 2010
  - Any Act, rule, etc, etc amending or replacing the above Acts
  - Any other statute, statutory instrument, etc, etc to prevent unlawful discrimination

- Compliance to Health & Safety regulations
- Termination
- Indemnity and Insurance
- Confidentiality and the Freedom of Information Act 2002
- Disputes procedure
- Authorised Users
- Governing Law
- Employee Vetting, typically Enhanced Disclosure, where appropriate

Where any contract provides for the appointment of a nominated sub-contractor, the responsible Council Officer or agent must ensure that the contract also includes for the following:

- The main contractor is subject to the same payment terms as the Council, thereby assisting in the elimination or minimisation of sub-contractor SME cash flow problems.
- The main contractor is responsible for ensuring that the nominated sub-contractor is subject to and meets the same requirements as the main contractor, including:
- The mandatory clauses identified in these Contract Standing Orders
- Supporting the local economy and promotion of local employment.
- Vetting to Enhanced Disclosure level where required.

#### **40. Tender Documentation - Works Contracts**

Guidance and advice on works documentation must be sought from Assets, Property and Facilities Management (Construction) or Roads Improvement (Civils) before any procurement process commences.

#### **41. Supplier Contract Terms and Conditions**

Officers are not permitted to enter into contracts on the Supplier's Contract Terms and Conditions and should take care that they do not inadvertently enter into a contract on the Supplier's Contract Terms and Conditions.

In the rare event that a Supplier refuses to accept the Council's Contract Terms and Conditions, the Supplier's Contract Terms and Conditions are to be referred to Legal Services for review and possible approval.

## **SECTION F - CONTRACT MANAGEMENT**

### **42. Contracts Register**

A Council Contracts Register (Pro Contract) will be maintained by the Business Development Director that provides a central point for contract information.

All contracts awarded on behalf of the Council that have a total aggregated value in excess of £25,000 will be recorded in the Council Contracts Register, using information contained in the Contract Reporting and Monitoring Form.

Services and the member of staff responsible for completion of the RFQ or tender will be responsible for ensuring recording and submission to the Business Development Director of the final actual contract cost compared to the original estimated contract cost, detailing the reasons and justification for any overspend or underspend.

### **43. Contract Monitoring and Management**

Contracts awarded by or on behalf of the Council must be monitored and managed throughout the contract term to ensure delivery of the contracted goods, services or works in accordance with the contract requirement and standard.

Contract monitoring and management arrangements agreed during the procurement process will be determined by the complexity and risk associated with the contract, conditions in the relevant market and must consider both financial and quality aspects.

Senior Leadership Team officers are empowered to investigate and negotiate potential variations to a contract after contract award, subject to the provisions of the Public Contracts Regulations 2006. However, any variations or changes that are agreed will need to comply with the Council and Cabinet decision making arrangements and these Contract Standing Orders.

### **44. Contract Extensions**

#### **44.1 Users**

Contracts awarded on behalf of the Council can be used by all Council Services.

The “Authorised Users” clause allows use of the contract to be extended beyond the Council, subject to the written consent and approval of the Council. The “Authorised Users” clause can only be exercised if it has been included in the original RFQ / Tender document.

#### **44.2 Period**

Contract periods can only be extended where the option to do so has been incorporated into the advertisement and contract documentation returned by bidders / tenderers.

#### 44.3 Value

Contracts cannot be extended beyond the value incorporated and detailed in the advertisement and contract documentation returned by bidders / tenderers. Once the advertised value has been reached, the requirement is subject to further competition.

#### 44.4 Additional Work – Goods Contracts

Where there is potential for additional work to be carried out subsequent to the completion of a contract, then that additional work is to be incorporated into the original contract. If additional work is not included in the original contract, the scope of that contract cannot be extended.

#### 44.5 Additional Work – Services and Works Contracts

Additional works or services up to a maximum of 50% of the original estimated value may be purchased, but only where the original contract notice stated that additional works or services may be awarded. The additional 50% can relate to the contract scope, the contract value or the contract term.

### **45. Contract Variations**

During the course of a contract, factors may arise that may result in a significant overspend or underspend on the contract.

In these circumstances, Officers are required to report the variation in accordance with 45.1 below, and may also be required to commence a new procurement process in accordance with 45.2 below.

#### 45.1 Reporting and Authorisation

The factors and projected financial impact must be reported to the Senior Leadership Team officer, who must then report same to the:

- Section 151 Officer
- Business Development Director
- Internal Audit
- Chief Executive
- Leader of Council or relevant Cabinet Member

Where during the course of a contract additional contract costs in excess of 10% of the original contract value, other than variations authorised within the contract, are identified, details of the additional costs must be reported to the Section 151 Officer and:



- Where the additional costs exceed 10% of the original contract value, to the Chief Executive and Business Development Director.
- Where the additional costs exceed 20% of the original contract value, to Internal Audit, the Chief Executive, the Business Development Director and to the Leader of Council or relevant Cabinet Member.

Subject to the provisions of the contract, every extra or variation will be evidenced and authorised in writing by the Council Officer responsible for the contract or the agent acting on behalf of the Council.

Every extra or variation must be reported to the Senior Leadership Team officer and Business Development Director if the cumulative effect of the extras or variations result in an increase or decrease to the original contract price of 10% or £25,000, whichever is the greater.

On completion of the contract, a final summary of the extras or variations is to be recorded by completion and submission of an updated Stage 2 of the Contract Monitoring and Reporting form.

The final summary of the extras or variations will then be reported in the Council Information Bulletin and contract information updated in the Contract Register, on the Intranet and on the Council's public website.

#### 45.2 Requirement to Commence a New Procurement Process

A material amendment to the contract requires that a new procurement process be undertaken. A material amendment is one which:

- Introduces conditions, which, if they had been part of the initial award procedure, would have altered the outcome of that procedure
- Extends the scope of the original contract to encompass goods, services or works not initially covered
- Changes the economic balance of the contract in favour of the contractor in a manner not provided for in the terms of the original contract

#### **46. Termination of contracts**

All written contracts shall contain a clause enabling the Council to cancel the contract.

Contracts up to £100,000 may be terminated early by agreement of the parties prior to the expiry date or in accordance with the termination provisions set out in the contract.

Approval to terminate a contract can only be given as follows:

<b>Total Aggregated Contract Value</b>	<b>Approval</b>
<b>£5,000,000 or greater</b>	<b>Cabinet or, in case of urgent business need, the Leader of the Council.</b>
<b>£500,001 - £4,999,999</b>	<b>Relevant SLT officer(s) or Cabinet Member(s).</b>
<b>£250,001– £500,000</b>	<b>Officer Scale 6 or above</b>
<b>£25,001 – £250,000</b>	<b>Officer Scale 8 or above</b>
<b>£10,000 – £25,000</b>	<b>Officer Scale 13 or above</b>
<b>Less than £10,000</b>	<b>All officers</b>

The Business Development Director, Section 151 Officer and Monitoring Officer must be consulted on any proposed termination of a contract over £100,000 in value.

### **SECTION G – BIDS FOR EXTERNAL CONTRACTS**

#### **47. Authorisation**

Where a Service within the Council wishes to submit a bid to provide Supplies, Services or Works to a third party and the proposal:

- Has a Total Aggregated Value in excess of £100,000

and / or

- will utilise in excess of 10% of the total staff resources within that Service

Before any bid can be submitted to a third party

- Approval to proceed must be sought from the Business Development Director, Section 151 Officer and Monitoring Officer
- Any conditions attached by the third party to the submission of bids are required to be referred to and approved by Legal Services.

All such proposals submitted to Third Parties are required to follow any and all relevant industry good practice and adhere to guidance issued by the appropriate Senior Leadership Team officer or by the Business Development Director.

**SECTION H - PROCUREMENTS UNDER £25,000**

<b>Procurement Stage</b>	<b>Evidence of Compliance</b>
<b>Authority to procure</b> (includes both setting up new vendors or when existing vendor(s) are used but the type of spending is 'new'. Does not apply to current vendors where the spend is unchanged.)	<ul style="list-style-type: none"><li>• Email from the procuring officer to the appropriate Certified Procurement Officer (CPO) empowered under CSO requesting authority to proceed and giving the following details:-<ol style="list-style-type: none"><li>1. Reason for the procurement</li><li>2. Options considered (or waiver)</li><li>3. Recommendation</li></ol></li><li>• Email confirmation from the CPO authorising the procurement</li><li>• Confirmation that budget approval has been given to proceed with the procurement.</li></ul>
<b>Waiver (should be by exception)</b>	<ul style="list-style-type: none"><li>• Contact the CPT to get advice about the correct process to follow and get approval to enter the waiver process from a Strategic Manager. Email <a href="mailto:strategicprocurement@somerset.gov.uk">strategicprocurement@somerset.gov.uk</a>.</li><li>• If approval is given complete the relevant waiver application form attaching all evidence for audit and record keeping purposes (where relevant).</li><li>• Present completed form and evidence in the form of a business case to the CPT. This will be presented to the Commissioning Board to assess and make a recommendation for the Business Development Director to make a final decision.</li><li>• If final sign-off is received from the Business Development Director the CPT will notify you that you can proceed with your order.</li></ul>
<b>Competitive Quote exercise</b>	<p>Procuring officer to maintain records that show the following:-</p> <ul style="list-style-type: none"><li>• Details of three prospective suppliers and selection criteria</li><li>• Three competitive quotes and supporting documentation</li></ul>

<b>Procurement Stage</b>	<b>Evidence of Compliance</b>
	<ul style="list-style-type: none"><li>• <b>Details of the pre-determined award criteria</b></li><li>• <b>Assessment of quotes and correspondence.</b></li></ul>
<b>Authority to Award</b>	<ul style="list-style-type: none"><li>• <b>Email from the procuring officer to the relevant officer under Scheme of Delegation seeking authority to award the contract and including the following:-</b><ul style="list-style-type: none"><li>○ <b>Assessment criteria for competitive quotes</b></li><li>○ <b>Report on competitive quotes (including evidence of best value)</b></li><li>○ <b>Recommendation</b></li></ul></li></ul> <p><b>Email from the relevant officer under Scheme of Delegation to the procurement officer authorising the award of the contract.</b></p>