

APPENDIX 1

Contract Standing Orders

Council rules for buying goods, materials, work, or services

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Contract Standing Orders (CSOs)

Section 1 Purpose and scope

1 Purpose

CSOs help us to:

- get value for money;
- keep within the law;
- maintain standards of conduct;
- be fair to our suppliers;
- show the public that we are honest; and
- meet the Council's corporate and directorate aims and policies.

Our Council approves the overall framework of CSOs. Any codes of practice or guidance provided by the Strategic Director of Performance and Development or the Strategic Director of Resources (such as the Procurement Code of Practice) form part of CSOs. The Council also has a procurement policy which all directorates are expected to implement within their own area of influence.

CSOs for Schools are set out in another document. You should follow these if you are arranging contracts for schools. Wherever possible CSOs for Schools are identical to these CSOs and there are very few differences.

2. Scope

CSOs apply to **all** contracts with outside organisations or people unless you have obtained an exemption (see paragraph 7). Community, foundation and voluntary schools in Warwickshire are not classed as outside organisations.

A contract is any agreement to provide goods, works or services in exchange for payment. This includes:

- placing orders;
- all contracts for selling property by formal tender;
- loan or leasing arrangements;
- employing outside experts or consultants under contracts **for** services;
- tenders for subcontracts; and
- contracts where we are the supplier.

Supplier means any person or organisation providing the goods, works or services.

3. Officers' responsibilities

3.1 Strategic Directors (for their directorate)

- **To follow** CSOs and any codes of practice, guidance or instructions provided by the Strategic Director of Performance and Development and the Strategic Director of Resources.
- **To follow** all relevant UK and European laws.
- **To follow** our financial standing orders and make sure effective systems are in place to control budgets properly.
- **To agree** with the Strategic Director of Resources how best to check the financial situation of suppliers.
- **To get** legal, financial and other advice in good time and to make sure that contracts are legal and we can carry out our duties under them.
- **To make sure** that we deal with contracts and tendering procedures in line with CSOs and financial standing orders.
- **To make sure** that their directorates have systems in place to avoid fraud and corruption.
- **To keep a list of the officers** responsible for dealing with tenders and contracts. This list must show the extent of each officer's powers.
- **To provide** any information which the Strategic Director of Performance and Development or the Strategic Director of Resources needs to help us meet legal requirements and our own CSO procedures.
- **To appoint** a Contracts Co-ordinator for their directorate.
- **To maintain** all contracts within the corporate contracts management system.
- **To make sure** that all relevant officers with powers to agree contracts have received corporate CSO training before receiving those powers.
- **To make sure** that all Council suppliers have in place sufficient insurance cover as appropriate to the contract and in relation to ordinary and major contracts, to make sure that the insurance requirements set out in Appendix 2 are met.
- **To make sure** that any of their officers involved in contract negotiations are sufficiently skilled and understand the legal parameters that apply to contract negotiations.
- **To make sure** that all Council suppliers comply with all applicable Health and Safety legislation.

3.2 Strategic Director of Performance and Development

- **To provide** codes of practice, guidance and instructions on any matters which are relevant to contracting arrangements.

- **To carry out audits** to assess whether directorates have used CSOs correctly.
- **To produce** a formal report each year on whether directorates have used CSOs correctly.
- **To sign** and **record** in our central registers all contracts under seal **and** all major contracts.
- **To consult** the Strategic Director of Resources and recommend action if a directorate's arrangements for agreeing contracts have not met the requirements of these CSOs. This action may include reducing the value of minor, ordinary and major contracts.
- **To approve** all contracts over a value of £1,000 where we are the supplier.

3.3 Strategic Director of Resources

- **To make sure** that we get proper value for money.
- **To make sure** that all contracts comply with financial standing orders.
- **To make sure** that an appropriate financial evaluation is undertaken of potential suppliers to ensure that the Council manages risk effectively.
- **To consult** the Strategic Director of Performance and Development and provide guidance on any relevant financial matter.
- **To consult** the Strategic Director of Performance and Development and recommend action if a directorate's arrangements for agreeing contracts have not met the requirements of these CSOs. This action may include reducing the level at which contracts are classified as minor, ordinary and/or major.

3.4 Contracts Co-ordinator

Each directorate should choose a member of staff to act as its 'Contracts Co-ordinator' and should tell the Strategic Director of Performance and Development the name of that person. Each Contracts Co-ordinator is responsible for:

- ensuring that his/her directorate records details of all contracts that the directorate has let in the corporate contracts register system;
- acting as the point of contact for consultation on matters relating to Contract Standing Orders; and
- disseminating information on Contract Standing Orders to relevant officers within their directorates.

3.5 Authorised officers

Each Strategic Director must have a written record of the officers in their directorate who are responsible for agreeing contracts and the extent of those officers' powers. Those officers must:

- make sure that there is a suitable council, cabinet, committee, subcommittee or Strategic Director approval for all contracts they are responsible for;
- make sure that where appropriate any requirements relating to key decisions have been complied with (see paragraph 4.1.4 below);
- make sure that any actions taken are within their powers;
- check that there are sufficient funds in the budget to cover the financial commitment they are making; and
- provide details of all the contracts they are responsible for to their directorate's Contracts Co-ordinator.

3.6 Financial services managers

We have to produce prior indicative notices (PINs) before the start of each financial year for some contracts which go over the maximum values set out under the European Procurement Rules (**See Guidance Note 1, Schedule A**).

PINs are based on our best estimates of the likely value of contracts which will be agreed in each category during the following financial year.

Financial services managers must work out the **estimated** value of the contracts to be agreed by their directorate in the next financial year for each category of contract set out in **Schedule B of Guidance Note 1**. They must then pass this information to the Strategic Director of Performance and Development by 31 January.

3.7 Cost centre managers

Each cost centre manager is responsible for letting his or her financial services manager know the estimated value of contracts to be agreed by the cost centre in each category set out in **Schedule B of Guidance Note 1**. They should gather this information as part of their budget planning process for their cost centres.

The responsibilities of cost centre managers have been clearly set out in the 'Cost Centre Manager's Guide'.

3.8 All officers

- To understand the procedures they must follow when agreeing contracts and ordering goods, work or services for us.
- To make sure that when competing for a formal in-house bid they do not take part in the decisions relating to the process, or assessment of the bids or awarding of the contract.

- To follow the code of conduct for local government employees.
- To declare to their line manager any interest which could influence their judgement in contracting matters. Officers must also record their interest and their partner's interest in the Staff Register of Interests which is updated annually.

Section 2 Steps Prior to Purchase

4. Approvals

4.1 Before beginning a purchase, the Authorised Officer responsible for it must:

4.1.1 make sure that there is approval for the expenditure. Approval can be in the form of:

- a council resolution;
- a decision made properly within the powers of the cabinet, committee or sub-committee or council employee under a statutory scheme; **or**
- the delegated powers of Strategic Directors under standing orders (see paragraph 4.2 below).

4.1.2 make sure that there is enough money in the budget to cover the financial commitment being made.

4.1.3 make sure that they have enough powers to deal with the contract. Copies of Council, Cabinet or other committee resolutions can be found on the Committee Administration database.

4.1.4 make sure that the Forward Plan requirements have been followed where the purchase is a Key Decision. The definition of a Key Decision and the Forward Plan requirements can be found in the Council's Standing Orders (Standing Order 10 and Standing Order 14).

4.2 Strategic Directors have been given delegated powers in relation to all matters of day-to-day administration of the services they are responsible for. This includes:

- Taking the necessary steps to maintain the operation or effectiveness of their services; and

Taking the necessary steps to put in place a policy decision taken by the Council, a committee or sub-committee.

5. General Requirements

Before beginning a purchase, the Authorised Officer responsible for it must also;

5.1 Consider what procurement method is most likely to achieve the purchasing objectives.

5.2 Assess the risks associated with the purchase and how to manage them.

5.3 Prepare a procurement plan where the value of the purchase exceeds £100,000 or where the purchase poses a significant risk to the Council. This should set out the tendering timeframe, the risks and associated consequences of not being able to meet this timeframe and how the procurement decision contributes to the overall objectives of the Council. A standard template can be accessed through the Procurement Code of Practice section of the Corporate Document Library.

5.4 Consider whether the European Procurement Rules apply to your purchase and if they do, you must inform the Strategic Director of Performance and Development and the Strategic Director of Resources before you start the tender process.

Section 3 Conducting a Purchase

6. Deciding which procedure and competition requirements

6.1 Contract Procedure

Different contract procedures must be followed depending on the Total Value of the purchase. The table below sets out which procedures must be followed.

If the contract is to last for more than a year (including extension periods), the Total Value is:

Yearly contract value x Contract period (including any extension periods).

For example, a contract for 3 years with a yearly value of £30,000 has a total value of £90,000. A contract for 3 years with a yearly value of £30,000 and power to extend for a further 2 years has a total value of £150,000.

Total Value	Type of Contract	Procedure to Follow
Below £10,000	Minor	Directorate procedures, Appendix 1
Between £10,000 and £100,000	Ordinary	Ordinary contract procedures, Sections 3,4 and 5
Between £100,000 and EU procurement threshold	Major	Major contract procedures, Sections 3,4 and 5 and Appendix 2
Above EU procurement threshold	Major	Major contract procedures and EU procurement rules, Sections 3,4 and 5 and Appendix 2
Any value contract where we are the Supplier	Supply	Supply contract procedures, Section 4

Where the EU procedures apply you must consult the EU Procurement Guide and inform the Strategic Director of Performance and Development and the Strategic Director of Resources before you start the tender process. You can find the guide in the Corporate Document Library under the Procurement Section. There is also a link from the Procurement Code of Practice.

6.2 Competition requirement

- all contracts must meet the requirements of CSOs
- All contracts must be competitively let unless you have obtained an exemption from CSOs (see Section 7)
- You must not enter into separate contracts or select methods of calculating Total Value in order to minimise the application of CSOs.

7. Exemptions from Contract Standing Orders

7.1 We will only allow exemptions from Contract Standing Orders **in exceptional circumstances**. You must have permission from the Strategic Director of Performance and Development and the Strategic Director of Resources.

7.2 To apply to waive any requirement of Contract Standing Orders, the Strategic Director who is applying for an exemption must fill in **Form 1** and send it to the Strategic Director of Performance and Development. You must allow plenty of time for the Strategic Director of Resources and Strategic Director of Performance and Development to consider your application and to allow for tendering if they refuse your application.

7.3 Examples of circumstances which **may** justify an exemption are:

- **urgency** - real emergencies, not delays in making arrangements to agree particular contracts;
- **no real competition** - the Strategic Director must use market analysis to explain why there is only one supplier;
- **extending an existing contract** - it must be in our interests to negotiate with the existing supplier;
- **price control** – if the price is controlled by trade organisations or government order and there is no reasonable alternative;
- **repairs or parts** – if the only option is to repair or buy new parts for existing equipment or buildings and there is only one supplier;
- **a partnership arrangement** – if the supplier is making a large contribution to the funding, and the work, goods or services could not be provided as economically without that contribution.

7.4 For certain categories of contract, directorates may wish to apply for a block/blanket exemption. In such cases the justification for seeking such a blanket exemption must be clearly set out in **Form 1**.

8. Drafting your contract specification

- 8.1 You must produce a description of the goods, services or works you need before you start the tender process (the specification). This will allow you to compare prices properly and once the contract has been let, will enable us to assess the contractor's performance.
- 8.2 The level of detail of your specification will depend on the value and type of goods, services or works you are buying.
- 8.3 You should consider whether it is more appropriate to use an input or output based specification for your contract. More details on this can be found in the Procurement Code of Practice

9. Deciding which procurement method

9.1 Centrally approved contracting arrangements

You must consider whether there is an established centrally approved contract (such as County Council, ESPO, OGC, GCAT or SCAT). Where these exist these must be used.

If you use approved contracting arrangements, we will assume that your procedures for agreeing and awarding the contract have met CSOs.

You can get details and advice about these centrally approved contracts from the Procurement Code of Practice or the County Procurement Unit in the Resources Directorate.

9.2 Using an external tender service

If there isn't a centrally approved contract, you should consider whether it is more cost effective for the Council to undertake its own procurement activity or whether it is better value to enlist the support of an organisation like ESPO to do it for you.

9.3 Approved supplier lists

There may be an approved supplier list which you can use to make your purchase. Further details on approved supplier lists can be found in Section 4 (see paragraph 24).

You must not use approved supplier lists for contracts governed by the EU Procurement Rules as these must be advertised.

9.4 Conducting a tender process

9.4.1 If the above options are not suitable or not cost effective, you will need to carry out a competitive process to select your contractor. The process will differ depending on whether you want to let a minor, ordinary or major contract.

9.4.2 Paragraphs 10 to 23 below must be followed to select your contractor. Where there are different rules for different types of contract, these are set out in the tables.

9.5 Electronic purchasing mechanisms

- 9.5.1 e-Procurement is the term used to describe the use of electronic methods at every stage of the purchasing process, from the identification of a requirement, through to payment, and potentially to contract management.
- 9.5.2 e-Procurement can have a number of benefits including:
- efficiency improvements
 - driving down costs for the Council
 - reduced costs for suppliers
 - opening up the marketplace
- 9.5.3 Any contracts that you let or enter into by electronic means which ARE subject to the EU procurement rules, must comply with the EU rules relating to electronic purchasing mechanisms in addition to general UK procurement law and good practice and all relevant rules of the Council including these Contract Standing Orders.
- 9.5.4 Any contracts that you let or enter into by electronic means which are NOT subject to the EU procurement rules, must comply with general UK procurement law and good practise and all relevant rules of the Council including these Contract Standing Orders.
- 9.5.5 In the event that you wish to make use of a Dynamic Purchasing System (DPS), that system must have the prior approval of the Strategic Director of Performance and Development and the Strategic Director of Resources. You must comply with the guidance and rules set out in the Procurement Code of Practice in order to set up a DPS.
- 9.5.6 The use of electronic reverse auctions (eAuctions) may increase competition and enable you to deliver better value for money solutions. In the event that you wish to make use of an eAuction the electronic system must have the prior approval of the Strategic Director of Performance and Development and the Strategic Director of Resources. You must comply with the guidance and rules set out in the Procurement Code of Practice in order to set up an e-Auction.

10. Getting prices / advertising

There are different rules on whether you need to advertise and invite tenders depending on the type of contract concerned. These are set out below.

Type of Contract	Minimum Procedure
Minor	You must follow your directorate's procedures You must get value for money You must consider the need for competition Get quotations if possible
Ordinary	As a minimum you must get prices in writing (quotations) from at least 3 suppliers. For higher value purchases, or where it is not appropriate to seek quotations, you must advertise and invite to tender. If you decide to advertise you must also advertise on the Council's web-site (Tender's Available page)

Major but not EU	You must advertise and invite to tender. As well as using external trade or professional journals to advertise, you must also advertise on the Council's web-site (Tenders Available page)
EU contracts	You must advertise in the EU Journal and invite to tender. You must also advertise on the Council's web-site (Tenders Available page)

There are no hard and fast rules about whether you should obtain at least three written quotes or go out to tender. However, two principal factors should influence your decision. In essence, the higher the **value** of the contract and/or the more **risk** the Council is exposed to, the more likely it is that you should go out to tender rather than simply obtaining quotes. For contracts valued at **£30,000** or above you should usually go out to tender unless there are compelling reasons why that is not appropriate.

Your decision either to go out to tender or to obtain at least three quotes should be documented with a written note that should be kept setting out your reasons for your preference. This is particularly important in the event that the value of the contract is £30,000 or above and you have decided that going out to tender is not appropriate,

Where you decide that you do not need to go out to tender, you must get prices in writing from at least three suppliers. For example, you may get prices from the catalogues of three separate suppliers.

Where you decide that you do need to tender for services you must either advertise, or use approved supplier lists in accordance with the rules and guidance set out in paragraph 24 below.

Further information is available in the Procurement Toolkit.

11. Selecting Tenderers

11.1 Contracts that are subject to the EU procurement rules (and other contracts where that is appropriate) follow a two-stage process (in the open procedure, the two stages may take place simultaneously, but they are separate and discrete; nevertheless, the procurement regime requires that there is no blurring of the two stages, even when using the open procedure):

11.1.1 The first stage concerns **selection** and is about assessing the potential of suppliers via a business questionnaire (available through the Procurement Code of Practice) (also called a Pre-Qualification Questionnaire ('PQQ')).

You may only consider those matters which are relevant to the performance of the contract in question. EU procurement rules formally limit the selection criteria and the evidence you may use to test those criteria. Where you are advertising for

suppliers, **you must agree and record your method for selecting short-listed tenderers before you advertise.** When deciding your method, you must

- Treat all tenderers in the same way ;
- Keep the process simple and clear; and
- Record and retain all documentation relating to your selection decisions.
- The receipt and opening of PQQs should be formally recorded, dated and signed by the appropriate officers.

In deciding your method, you must take into account past performance on similar contracts (quality and cost), financial standing, experience and expertise and technical capacity. You can also ask for information from referees and company searches. If you decide that a supplier has met the required criteria at the selection stage, you cannot then fail the supplier on the same criteria at the evaluation stage (unless exceptionally, there has been a relevant change in the circumstances of the supplier).

In the interests of transparency and fair competition, you should not normally accept the submission of a late PQQ except in the same circumstances where a late tender would also be accepted (see paragraph 15 below).

At the selection stage you are NOT permitted to consider the suppliers' proposals as to how the contract would be delivered. Once a supplier has been selected, they are deemed to be suitable to undertake the contract unless relevant changes occur during the later stages of the procurement process (e.g. a change in a supplier's financial standing). A minimum number of suppliers are then invited to submit tenders.

11.1.2 The second stage comprises **evaluation** of the tenders and will usually lead to the award of the contract. It is at the evaluation stage that any contract specific proposals (e.g. price) are assessed.

12. Contract Award Criteria

12.1 **Before you ask for prices** (whether by quotation or invitation to tender) **you must decide and record how you will assess the quotations or tenders that you receive.** Your criteria must be designed to ensure that the Council gets best value for money.

12.2 You must publish any tender scoring system or similar tender evaluation model to be used prior to the issue of the invitation to tender. At the same time, you must also notify suppliers of any weightings to be used. These rules apply to all contracts regardless of whether or not they are subject to the EU procurement rules. Further information is available in the Procurement Code of Practice.

12.3 Strategic Directors must make sure that the contract award criteria

- Do not prevent fair competition
- Do not illegally discriminate between tenderers
- Meet any relevant UK and EU laws

12.4 The basic award criteria can be:

- Most economically advantageous tender (MEAT), where considerations other than price apply. This will be the most suitable criterion in most cases as it provides the Council with the greatest flexibility.
- Lowest price where we are purchasing goods
- Highest price where we are supplying goods

12.5 Where your award criteria is based on the most economically advantageous offer, you may take into account relevant considerations such as price, technical standard, experience and skills, social and environmental considerations, practical considerations, financial proposals, contract management, quality management proposals and delivery proposals.

13. Inviting Tenders

13.1 Where you are advertising for tenderers, you must invite at least 3 tenderers to tender.

13.2 You must send them an invitation to tender together with the contract documents and a tender form. You must also include instructions on how and when they must return their tenders. You must give tenderers a reasonable amount of time properly to complete the tender (or Pre-Qualification Questionnaire), and you must factor a reasonable response time into your procurement timetable. What is 'reasonable' will depend upon a number of factors, including:

- the amount of information that you require tenderers to provide
- the complexity of information that you require tenderers to provide;
- the value of the contract;
- whether you are asking tenderers to provide information which they themselves do not hold and which they will need to obtain from a third party;
- whether tenders (or Pre-Qualification Questionnaire) may be returned electronically;
- whether there are specific rules that govern your procurement timetable. E.g. highly detailed rules govern the timetable for contracts that are subject to the EU procurement rules depending upon which procedure (open, restricted, negotiated or competitive dialogue) is being followed.

Even where the EU procurement rules do not apply, the EU timescales should be used as a guideline as to what is a reasonable amount of time to give to tenderers to complete a tender, though it may be reasonable to reduce those, depending upon individual circumstances.

13.3 Your invitation to tender must explain how we will deal with mistakes.

13.4 Invitations to tender can only be sent electronically if in accordance with guidance given by the Strategic Director of Performance and Development and the Strategic Director of Resources.

13.5 During the period allowed for preparing tenders, you must record all your communications with tenderers. If a tenderer raises a query during this period,

you must pass it on to all tenders together with your reply. Remember not to give the identity of the tenderer who has raised the query.

- 13.6 You must not pass on the names or details of suppliers to anyone at any time during the tendering process.

14. Returning Tenders

- 14.1 Tenders can be returned by hand or by post or electronically provided this is in accordance with an electronic tendering system approved by the Strategic Director of Performance and Development and the Strategic Director of Resources. Tell your tenderers to use postal services that provide them with proof of postage and the time of sending.
- 14.2 You must not accept tenders sent by fax or other electronic means unless they have been sought in accordance with an electronic tendering system approved by the Strategic Director of Performance and Development and the Strategic Director of Resources.
- 14.3 When you receive a written tender, stamp or write the date and time on the packaging. Do not open any of the tenders (whether received by hand, by post or electronically) until the final deadline for receiving them. Keep them in a safe place.
- 14.4 If you open a tender by mistake before the deadline, write down how this has happened. In the case of tenders received by post or hand, attach this to the packaging and re-seal the tender immediately. In the case of electronic tenders, keep a copy on the contract file. In all cases, do not tell anyone else about the contents of the tender.
- 14.5 If you receive fewer tenders than expected, do not contact tenderers to ask whether they have sent one in.

15. Late tenders

- 15.1 You should normally reject tenders which you receive after the deadline.
- 15.2 In exceptional circumstances a Strategic Director can accept a late tender. This only applies if:
- you have not opened any tenders; **and**
 - you have proof that the tender was posted in enough time to meet the deadline. If the tender is delivered by hand, the person delivering it must explain why it is late. The chief or authorised officer must be satisfied with the reason. You must record this reason.
 - in the case of major contracts, the agreement of the Strategic Director of Performance and Development must also be obtained.

- 15.3 If you decide to accept a late tender, you must treat that tender in the same way as all other tenders. You must record full details of your decision to accept the late tender on file.
- 15.4 If you decide to reject the late tender, you should leave the tender on file, unopened, for two years. You can then destroy it.

16. Opening tenders

- 16.1 Before the deadline for return of tenders, you must agree a time for opening the tenders. Try to open the tenders as soon as possible after the deadline for returning them. If a delay becomes necessary, the authorised officer must agree to this and the reason must be recorded. Never extend the deadline for returning tenders or delay the time for opening them to allow for late tenders.
- 16.2 The authorised officer must make sure that the procedures for opening tenders are followed and that the correct records and documents are completed.
- 16.3 The opening requirements as set out in the table below must be followed

<i>Type of contract</i>	<i>Opening requirements</i>
Ordinary	Tenders opened in front of at least 2 officers from contracting directorate
Major or EU or any call-off contract let under a framework agreement where the call-off contract has a total value of £100,000 or more	Tenders opened in front of at least 1 officer from the contracting directorate and 1 officer from Law and Governance authorised by the Strategic Director of Performance and Development to open tenders for major contracts as his representative from

- 16.4 You must open all tenders at the same session. Open them one at a time. Then each officer must sign and date them. Record the details of each tender on a tender return form. Each officer must sign and date the form.
- 16.5 The officers must sign each page of the tender form unless it is very long. In this case, they only sign the pricing pages.
- 16.6 Once the tenders have been opened, store them again in a safe place.

17. Assessing Tenders

- 17.1 Before assessing the tenders, you must check that each one meets the requirements of your specification. You must also make sure that there are no major mistakes and that nothing is missing.
- 17.2 You must also check the accuracy of the figures in each tender. If you find minor mistakes which do not affect the overall price or the specification, contact the tenderer and ask them to confirm the correct figures in writing. Keep a record of all

mistakes and attach it to the tender documents together with any corrections you have agreed with the tenderer.

- 17.3 You must assess each tender based on the Contract Award Criteria you have chosen (see paragraph 12 above).
- 17.4 The results of your assessment are strictly confidential, so you must not pass them on to anyone who is not involved in the evaluation process.
- 17.5 Once you have completed the assessment, you need to produce a report (with a level of detail commensurate with the value of the contract and the risk to the Council), showing:
- the result of your assessment of each tender;
 - a comparison of assessment results; and
 - your recommendation for who should be awarded the contract.

18. Selecting the supplier

- 18.1 The authorised officer should accept the tender which offers the Council best value for money. This applies whether you get prices by quotes or by more formal tendering processes. This will usually be ;
- the lowest tender; or
 - the tender which will be of most economic benefit to us. In this case you should record your reasons for choosing that tender and place your note on file before accepting the tender.
- 18.2 Whichever criteria you decide on, this is how you must evaluate. You must not change your criteria part way through the process.
- 18.3 The report that is required under paragraph 17.5 above, should be sent to a person with sufficient delegated authority to award the contract. You should always consider whether your recommendation for awarding the contract should be put before the Cabinet **before** contacting the successful tenderer.
- 18.4 For contracts that are **not** subject to the full EU procurement rules (that, is contracts for Part B Services or contracts below the EU procurement thresholds) you must write and tell the successful tenderer your decision as soon as possible **after you have received all necessary approvals** (see paragraphs 3, 4 and 27). Let unsuccessful tenderers know your decision after you have told the successful tenderer and the successful tenderer **has accepted**.

If unsuccessful tenderers ask why their tender was not successful, you can tell them in general terms about the areas of their tender which scored poorly in your assessment. Do not give them details of the other tenders. The name of the successful tenderer and the value of their bid will be made available to the public (see paragraph 20).

Standard letters both to successful and unsuccessful tenderers are available in the Procurement Code of Practice.

18.5 For contracts that **are** subject to the full EU procurement rules (that is, NOT contracts for Part B Services or contracts below the EU procurement thresholds) you must write and tell ALL tenderers, both successful and unsuccessful your decision as soon as possible **after you have received all necessary approvals** (see paragraphs 3, 4 and 27). A minimum mandatory standstill period of **ten calendar days** is required between communicating the award decision to ALL tenderers and entering into a contractually binding Agreement with the successful tenderer.

18.6 Your notice of the award decision concerns only those tenderers who submitted a tender (valid or invalid). The notice must contain:

- the award criteria;
- where scores are being used, the score the tenderer obtained against those award criteria;
- where appropriate, the score the winning tenderer obtained; and
- the name of the winning tenderer.

Standard letters both to successful and unsuccessful tenderers are available in the Procurement Code of Practice.

18.7 You must provide a debriefing within the mandatory ten calendar day standstill period **where an unsuccessful tenderer requests it** by the end of the second working day of the standstill. You must inform the tenderer of the reasons why he was unsuccessful and, if the tenderer submitted an admissible tender, you must inform him of the characteristics and relative advantages of the successful tenderer. You must allow three full working days between the dispatch of this additional debriefing and the end of the standstill period. You may therefore need to extend the standstill period around public holiday periods.

18.8 Where a request for a debrief from an unsuccessful tenderer arrives within the ten calendar day standstill period but after the two working days deadline, you are not required to provide the debriefing within the mandatory standstill period but you must provide it within fifteen calendar days of receiving the written request.

19. Negotiating

19.1 It is the responsibility of Strategic Directors to ensure that any of their officers involved in contract negotiations are sufficiently skilled and understand the legal parameters that apply.

19.2 If it is in our best interests, the authorised officer may negotiate with tenderers for more favourable prices or terms. The following conditions apply to negotiating.

- You must not discuss one tenderer's detailed prices, conditions or terms with another tenderer.
- You must not give anyone information about our criteria for accepting a tender or any other matter connected with the contract or tenders without permission from the Strategic Director.

- If negotiations lead to a change in the description of the goods, work or services or other terms, you must invite everyone who has provided a tender to re-tender on the basis of the revised contract.
- If other tenderers as well as the tenderer who sent in the lowest price are to be approached the Strategic Director of Resources must agree that negotiations can take place.

19.3 If there is an in-house bid for the contract or the contract falls under EU Procurement Rules or other legal requirements, negotiations must not take place without permission from the Strategic Director of Performance and Development and the Strategic Director of Resources.

20. Disclosure of tender information

20.1 You must not give tenderers or suppliers or anyone who has a financial interest in the contract any information about the bids or affairs of any other tenderer or contractor unless the law says you must do this. The information you receive is confidential.

20.2 The only information you should make public is the name of the successful tenderer and the value of their bid. This can be done by using the Council's Procurement website which is available through the Procurement Code of Practice or in the Procurement section of the Corporate Document Library. You must not release this information until the contract has been awarded.

20.3 Strategic Directors may decide to make available the value of the other bids received. This information should **not** include the names of the unsuccessful tenderers. Strategic Directors should make sure that if they are planning to release this information, tenderers know this at the start of the process.

21. Keeping Written Records

Each directorate **must keep proper written records** of:

- the different stages of the tendering process including all the quotes and letters you have received, and notes of phone calls and meetings about selecting suppliers;
- the awarding of the contract;
- any information provided to tenderers or contractors; and
- any decisions made, together with the reasons for those decisions.

You must keep these records for the periods set out in paragraph 23.

This helps us to provide any reports our auditors or central government ask for about our contracting processes and to meet any legal challenge.

22. Contracts Register



- 22.1 Each directorate must record in the corporate contracts management system:
- details of all ordinary and major contracts it has agreed; and
 - details of all contracts it has agreed where we are the supplier (see paragraph 26 below for further details).

22.2 In addition to the requirements imposed by paragraph 22.1 above, each directorate must make sure that major contracts are recorded in the Central Contracts Register maintained by Law and Governance. So, for example, a contract for £110,000 must be recorded in the corporate contracts management system and also in the Central Contracts Register (see Section 5).

23. Storing Documents

- 23.1 You must consider confidentiality when storing contracts and other information relating to tenders and agreements.
- 23.2 You must store all contracts (including relevant correspondence and other records) for at least six years after the contract comes to an end. Contracts made as a deed or under seal must never be thrown away.
- 23.3 Keep documents relating to unsuccessful or late tenders for at least two years from the date the successful contract is agreed.
- 23.4 You must not throw away documents without the Strategic Director of Performance and Development's permission if:
- the documents relate to a particular contract or tendering process; **and**
 - there is a chance of legal action or a claim for personal injury or death.

Section 4 Special Types of Contract

24. Approved Supplier Lists

24.1 The Strategic Director may use approved supplier lists to:

- choose tenderers to bid for a contract; or
- buy one-off items.

You must not use approved supplier lists for contracts governed by the EU Procurement rules. These contracts must be advertised.

24.2 Before drawing up an approved supplier list you should advertise and invite people to apply to become approved suppliers for the particular type of contract. You must also advertise on the Council's web-site (Tenders Available page). When considering whether to include someone on the list you must consider:

- their past performance on similar contracts (quality and costs);
- their technical capacity;
- their specialist experience and skills in the type of products and services you are looking for;
- their financial situation; and
- their other commitments.

You may want to add other qualifications if you have a large number of possible suppliers. You can do this as long as they are relevant, do not prevent fair competition and do not illegally discriminate between suppliers.

24.3 If you use an approved supplier list, you will need a system for selecting suppliers from the list. Your system must make sure that all suppliers on the list have the same opportunity over time to tender for work.

24.4 Review your approved supplier lists every two years against the requirements set out above to assess whether a supplier should remain on or be added to the list. You should also consider whether there are any new suppliers to add to the list.

24.5 You should start new approved supplier lists after **advertising** at least every five years, or earlier if the number of approved suppliers remaining on the list means there is little competition.

25. Framework Agreements

25.1 Framework agreements ('call-off' contracts) can be useful where we know that there is an ongoing need for particular goods or services, but we don't know when the need will arise. In these cases a framework agreement allows the Council to fix

terms and conditions in advance and to award contracts as and when they arise without needing to re-advertise or re-tender.

25.2 Framework agreements do not commit the Council to buying anything and must only be used where best value can be demonstrated and evidenced. Costs of tendering can be taken into account when determining whether the framework provides best value.

25.3 Framework agreements are subject to all UK and EU procurement legislation and must also follow these Contract Standing Orders (including the Procurement Code of Practice). Thus:

- Where you undertake a mini-competition under a framework agreement, this must be administered in full compliance with these Contract Standing Orders. Thus, for example:
 - A date must be set for tender returns which leaves suppliers with an appropriate time to fully respond.
 - Law & Governance must be involved in the tender opening stage where the total value of the call-off contract that is the subject of the mini-competition is £100,000 or more (see paragraph 16 above).
 - The Council's internal rules relating to the signing/sealing of call-off contracts applies in the same way as any other contract let by the Council where the call-off contract has a total value of £100,000 or more.
 - Appropriate risk management arrangements for the contract must be made.
 - Appropriate performance monitoring arrangements for the contract must be made.
- Any call-off contract let under a framework agreement is subject to all UK and EU procurement legislation and must also follow these Contract Standing Orders (including the Procurement Code of Practice).
- If you are letting a contract which is subject to the full EU procurement rules your Contract Notice must:
 - make it clear that a framework agreement is being awarded;
 - include the contracting authorities that are entitled to call-off contracts under the terms of the framework agreement. You may name the County Council, or you may use a generic description (such as 'local authorities').
 - state the duration of the framework (this will be for a **maximum of four years** unless the Strategic Director of Performance and Development and Strategic Director of Resources provide their prior written agreement that there are exceptional circumstances, duly justified in particular by the subject of the framework agreement).

- state the estimated maximum quantity of value of the goods, works or services for which call-offs are to be placed.

25.4 Further guidance on framework agreements can be obtained from the Strategic Director of Performance and Development. Guidance can also be found in the EU Procurement Guide in the Corporate Document library and through the Procurement Code of Practice.

26. Contracts where the Council is the supplier

26.1 CSOs apply if we are supplying goods, work or services. Procedures will be different and will probably depend mostly on the person or organisation we are dealing with.

26.2 The Strategic Director must keep a list of supply contracts and a list of the directorate's unsuccessful bids. He or she must record the details of all individual contracts over £1,000 and a global entry for all contracts below £1,000 in the directorate's register for the contracts (see paragraph 22).

26.3 Where the Council is the supplier and before the contract is signed,

- You must secure the appropriate approvals
- For contracts over £1,000, the Strategic Director of Resources must be satisfied that our bid is financially practical
- For contracts over £1,000, the Strategic Director of Performance and Development must confirm that we can legally enter into the contract before we provide a tender
- For contracts over £1,000, the Strategic Director of Performance and Development must approve the terms and conditions
- There must be enough insurance to cover any liability we may have under the proposed contract
- You must follow the rules in CSOs on non disclosure of tender information (paragraph 20), keeping written records (paragraph 21) and storing documents (paragraph 23)
- You must follow the rules in CSOs on signing contracts (see Section 5)

27. Loans and Leasing Arrangements

You must not make loans or leasing arrangements (eg. a contract for a photocopier), other than those purchased through centrally approved arrangements, **without approval** from the Strategic Director of Resources. You can apply to the Strategic Director of Resources through your financial services manager. Where you are unsure about the contract terms you should seek advice from the Strategic Director of Performance and Development.

28. Appointing experts and consultants

28.1 There is often confusion about the status of people we 'employ' as experts or consultants and whether they are under a '**contract for services**' (as an independent contractor), **or** a '**contract of service**' (as our employee).

28.2 It is often thought that costs for national insurance and pension contributions can be avoided by hiring people as self-employed consultants. This is not necessarily the case as the terms and conditions of our contract with them will govern their employment status.

28.3 *Employment status*

Employment status is not a matter of choice. You cannot simply decide to treat working arrangements as employment or self-employment. It depends on the work to be done.

If someone is taken on under a 'contract **of** service' they are an employee and must be paid through Payroll.

If someone is taken on under a 'contract **for** services' they are self-employed and paid through Order and Payments.

Sometimes it is a little more difficult. The table at Guidance Note 2 gives detailed guidance. If you are not sure of someone's employment status, please let Payroll have the full details. They will get a ruling from the local Tax Office.

The person you are taking on may suffer cash flow problems if we treat them as an employee, but they will always have their tax affairs in order at year end, and there is no chance that we will suffer penalties for treating their status incorrectly.

Any penalties and backdated tax imposed by the Inland Revenue will be charged to the directorate concerned where it is clear that they have not followed guidance.

28.4 *What should we do to treat experts and consultants correctly?*

- Make sure everyone in your directorate who takes on or pays people knows the rules and that you have routines to monitor the situation.
- Tell people the tax arrangements before you hire them.
- Do not pay anyone for work done out of petty cash or Orders and Payments unless it is to refund their costs. For example, if a member of staff paints a chair and you pay them £20 for doing the job plus paint, they should pay tax in the usual way unless they are a contractor.
- If possible agree terms and all arrangements to pay people in writing.
- If you are considering hiring someone under a 'contract for service':
 - make sure they have a properly set-up business which provides the services you need;

- follow the financial regulations and contract standing orders for quotations and for work to be done;
- make sure you have a proper contract or written arrangement which sets out details of the work, performance and payment; and
- check that **none** of the common signs of employment in the table and guidance notes at Guidance Note 2 apply.

If you are in any doubt, contact Payroll.

If you instruct a consultant or agent, you must require them to act and operate in accordance with all relevant EU laws, UK laws, and the Council's internal rules, including Contract Standing Orders and Financial Standing Orders. For example, consultants and agents must let tenders in accordance with Contract Standing Orders and Financial Standing Orders and all relevant documents must be retained by your directorate in order to evidence that.

29. Partnership Working

Collaborative Partnering Contracts

- 29.1 In certain cases it may be in the best interests of the Council to enter into a collaborative partnering contract with a supplier. These types of contracts are a form of Strategic Partnership. They tend to be longer- term agreements with provisions for profit and risk sharing, open book accounting and additional benefits that the Council can expect from the arrangement.
- 29.2 Collaborative partnering contracts are subject to all UK and EU procurement legislation and must also follow these Contract Standing Orders.
- 29.3 You must carefully consider your contract award criteria to ensure that the Council can work successfully with your chosen supplier and that you both have common objectives. It is important that the contract remains performance based with payment only being made when specified predetermined standards of service have been satisfied.
- 29.4 Further guidance can be obtained from the Strategic Director of Performance and Development. Guidance can also be found in the Partnership Guidance in the Corporate Document library.

Joint Working Arrangements

- 29.5 In some cases, the Council may be working together with other public sector bodies on a shared project. In these cases where the partnership is not a legal entity in its own right and wants to secure goods or services, one agency takes the lead and lets the contract on behalf of all the other members of the partnership.
- 29.6 Contracts let on behalf of partnerships are still subject to all UK and EU procurement legislation and we must still be able to demonstrate that the partnership has obtained best value. This means that prior agreement must be reached with our partner organisations as to whose Contract Standing Orders apply, who undertakes the evaluation and who has authority to make the contract

award. Whoever's Contract Standing Orders apply, they should be at least as robust as ours. Your partnership agreement should set out these arrangements.

29.7 Where the Council is acting as the lead partner, these Contract Standing Orders must be followed for all purchases that are made on behalf of the partnership. This applies even where one of our partners is supplying goods or services back to the partnership.

29.8 Further guidance on how Contract Standing Orders applies to partnership working can be obtained from the Strategic Director of Performance and Development. Guidance can also be found in the Partnership Guidance in the Corporate Document library.

Approvals and Controls

29.9 Where the Council is entering into a partnering arrangement, appropriate approvals need to be in place. There are no hard and fast rules about this, however, in general terms if the value of the partnering agreement is over £1million, or under £1million and politically sensitive, Cabinet or Council approval (as appropriate) will be necessary. Otherwise, officers will have delegated power to enter into a partnering agreement in accordance with their directorate's delegation scheme.

29.10 Where the Council is entering into a partnering arrangement, the terms must be set out in formal written agreement. Law and Governance will be able to assist you with a suitable form of Agreement.

30. Pooled Budgets and Joint Commissioning

- 30.1 Pooling resources and joint commissioning between public sector organisations can be an effective way of securing services and in some cases, this is a legal requirement.
- 30.2 Services secured through this route are still subject to all UK and EU procurement legislation and we must still be able to demonstrate that we have obtained best value. This means that prior agreement must be reached with our partner organisations as to whose Contract Standing Orders apply, who undertakes the evaluation and who has authority to make the contract award. Whoever's Contract Standing Orders apply, they should be at least as robust as ours. Your partnership agreement should set out these arrangements. The relevant Contract Standing Orders must be followed even where one of our partners is supplying goods or services back to the partner organisations.
- 30.3 Further guidance can be obtained from the Strategic Director of Performance and Development. Guidance can also be found in the Partnership Guidance in the Corporate Document library.

31. Working with the voluntary sector

- 31.1 In some cases, the Council contracts and commissions services through the voluntary sector. There are circumstances in which the voluntary sector is in a better position to deliver services than either the public sector or the market, particularly for vulnerable or hard to reach groups.
- 31.2 Where you need to secure these types of service, you need to decide at an early stage whether you undertake a full contracting process where voluntary sector providers compete against the market or whether you use the voluntary sector as the preferred provider.
- 31.3 Whichever route is the most appropriate for the type of service you need to buy, Contract Standing Orders must be followed and your contract specification and conditions must be sufficiently detailed to enable you to ensure supply and manage performance.

Section 5 Written Contract and Other Formalities

32. Ordering and entering into a written contract

- 32.1 Once you have selected a supplier, you need to complete the contractual arrangements.
- 32.2 Check whether there is a format for entering the contract which has been approved by the Strategic Director of Performance and Development. Standard approved formats can be found in the Corporate Document Library in the Procurement Section. Alternatively your Contracts Co-ordinator should be able to help you do this.

32.3 If there is no approved format or you need to make changes to an approved format, send your draft or details of the changes to the Strategic Director of Performance and Development for approval.

32.4 All ordinary and major contracts must be in writing and must meet the requirements set out in Appendix 2.

32.5 Each Strategic Director must make sure that the contracts with his or her directorate are:

- legal;
- in line with financial regulations;
- drafted properly;
- appropriate; and
- are able to protect our interests fully.

33. Signing Contracts

You must make sure that the contract is signed by a properly authorised officer.

All major contracts must be either

- sealed by the Council and witnessed by a designated officer; **or**
- signed by **two** designated officers

All contracts under seal must be signed by a designated officer.

Designated officer means the Chief Executive, the Strategic Director of Performance and Development and any other officer authorised by either or both of them.

34. Certified Contracts

If a supplier asks us to certify that the contract is legal, you must pass the contract to the Strategic Director of Performance and Development before signing it. You must also send details of the approval for the contract and any other relevant documents.

35. Parent Company Guarantees and Performance Bonds

You must seek the advice of the Strategic Director of Resources on whether a parent company guarantee or performance bond is needed in cases where

- there is doubt about the suppliers financial standing
- the contract poses a high risk to the Council

36. Performance Monitoring

36.1 During the life of the contract, the Authorised Officer should monitor in respect of the following ;

- Performance;
- Compliance with specification and contract;
- Cost;
- Any Best Value requirements;
- User satisfaction; and
- Risk management

36.2 Where the contract is to be re-let this information should be available early enough to inform the approach to re-letting the subsequent contract.

37. Declarations of interest

37.1 Officers must declare to their line manager any interest which could influence their judgement in contracting matters. Officers must also record their interest any interest held by a close family member in the Staff Register of Interests which is updated annually.

37.2 Where an officer has an interest which could influence their judgment in contracting matters, he/she must not take part in the contracting process.

All officers involved in contracting matters must have regard to the Employee Code of Conduct which can be found in Managing People.

38. Interpretation

38.1 Any generic reference to 'Strategic Directors' in these Contract Standing (as opposed to the Strategic Director of a specific Directorate) is to be interpreted as including the Chief Executive of the Council.

APPENDIX 1

Process for minor contracts (Total value below £10,000)

1.1 Written arrangements.

Each Strategic Director must make written arrangements to deal with minor contracts. These arrangements must meet the requirements set out in these CSOs. You must send a copy of your arrangements to the Strategic Director of Performance and Development. If you change the arrangements, you must write and tell the Strategic Director of Performance and Development and send an amended copy.

1.2 Centrally approved contracting arrangements

You must consider whether there is an established centrally approved contract (such as County Council, ESPO, OGC, GCAT or SCAT). These must be used unless there is a more appropriate or cost effective alternative. If we are to carry out the tendering exercise, the costs of doing this should be taken into account when considering the cost effectiveness of a centrally approved contract.

You can get details and advice about approved contracting arrangements from the County Procurement Unit in the Resources Directorate.

1.3 Value for money

You must get proper value for money and consider the need for competition, efficiency and savings at all times. Get quotations if possible.

1.4 Authorisation

You should clearly set out the name of the supplier, what the contract is for, and the terms and conditions of the contract. They should also show that there is suitable insurance to protect our interests.

1.5 Honesty

Strategic Directors must make sure that their employees follow the code of conduct for local government employees. They must also make sure that if there is an in-house bid for a contract, those involved in making the bid do not take part in the decision about who gets the contract.

1.6 European Procurement Rules

Minor contracts may still be governed by detailed requirements under the EU Procurement Rules, so make sure that your written arrangements will identify the contracts to which these rules might apply. In any event, a number of principles developed by the European Court of Justice, such as equality of treatment, transparency, objectivity, mutual recognition and proportionality, apply to all public contracts regardless of value.

1.7 Records of contracts

You must keep full written records of each contract, including all the quotations and letters you have received, and notes of phone calls and meetings about selecting suppliers. You need to keep these records for the periods set out in paragraph 23.

1.8 Approved Formats

The Strategic Director of Performance and Development has approved a standard contract format for minor and low risk contracts. These standard contracts can be

found in the Corporate Document Library in the Procurement Section. Alternatively your Contracts Co-ordinator should be able to help you. If you need to make changes to an approved format, send your draft or details of the changes to the Strategic Director of Performance and Development. Depending on the nature of the contract, you may also need to add some of the more detailed contract clauses referred to in Appendix 2.

APPENDIX 2

Contents of Ordinary and Major Contracts

Every ordinary and major contract we enter into must be in writing and must set out the following:

2.1 Names and addresses

Our full name and address and the supplier's full name and address must be on the contract. If the supplier is a company, the contract should show its registered office address.

2.2 What the contract is for

This means the work, services or goods we are buying. This information will usually be set out in a specification which gives a description of the requirements or the desired results.

2.3 Price

This may be:

- a lump sum;
- a single rate; or
- several rates.

It may be impossible to define the price in advance. In this case you will need to draw up a pricing schedule which refers to the unit of pricing, quantities, and a fixed or index-linked price basis.

Do not review the prices of ongoing commitments more than once in any year unless the service is linked to prices or rates from statutory organisations and they are reviewed or adjusted at a fixed rate. Agree any change to prices in writing.

2.4 The programme or timescales

The contract should show the time and method for providing the services or goods. The dates for delivery and completing the work must be set out clearly.

2.5 A suitable quality standard for goods and materials

The contract must include any relevant standards and tests required. The level of detail will depend on the type and value of the contract.

2.6 Standards and codes to be followed

The contract should include any relevant EU, legal and council requirements. It must put the responsibility on the supplier to meet all laws, even if they are not specifically listed. Not knowing the law is no defence. Other standards and codes should be dealt with in the conditions of contract or the description of service.

2.7 Insurance

Strategic Directors are responsible for ensuring that the supplier arranges and maintains the following minimum insurances.

In all cases

- **Public liability – insurance at least £5million.** Suppliers often try to argue that they do not have insurance of this level or try to limit their liability to the total amount to be paid under the contract. This is not acceptable. Tell contractors about our insurance requirements in your tender documents.

Public liability insurance of over £5 million should be considered when

(i) the activity could be regarded as hazardous with a high potential for an incident occurring (e.g. involving work of a structural nature or involving the application of heat) and

(ii) the situation involves high potential exposure to injury or serious property damage (e.g. high value buildings / contents)

If necessary:

- **Product liability insurance - at least £2 million**
- **Professional indemnity cover - at least £2 million.** Professional indemnity insurance only applies if the policy is in force when the claim is made. The provision of insurance cover by the supplier should therefore extend beyond the contract period as a condition of contract.
- **Employer's liability insurance - at least £5 million**
- **Motor policy for physical injuries - unlimited**
- **Motor policy for property damage - at least £5 million**

Our insurers have recommended these limits to make sure that we are protected properly. We will only allow the recommended levels to be varied in exceptional circumstances. If you want to change the recommended levels you must have permission from the Strategic Director of Performance and Development and the Strategic Director of Resources. To apply to vary the recommended insurance levels, the Strategic Director who is applying for a variation must fill in **form 2** and send it to the Strategic Director of Performance and Development for consideration.

You will also need to ask for a copy of the suppliers insurances before entering into the contract so that you can check that:

- The insurance policies cover the work being undertaken
- The insurance policies do not contain any conditions which would invalidate the insurance
- The supplier has paid the insurance premiums and the policies remain valid

To help you make these checks an Insurance Questionnaire is available in the Corporate Document Library in the Procurement Section.

If you need more advice on insurance, contact the Strategic Director of Performance and Development through the Insurance and Risk Management Officer.

2.8 Anti-bribery and anti-corruption clauses

You need a clause which entitles us to cancel the contract and get back our costs as a result of doing so if the contractor tries to influence any of our officers. A standard clause can be found in the Corporate Document Library in the Procurement Section.

2.9 Transferring and subletting

Your contract must show clearly that the contractor cannot transfer or sublet any rights or responsibilities without our written permission. This helps us to make sure that suppliers do not use anyone who is unacceptable to us to perform the contract.

2.10 Liquidated damages

In all major contracts we need a clause which entitles us to liquidated damages if the supplier fails to meet the dates given in the contract. If you need more advice about this, please ask the Strategic Director of Performance and Development. Liquidated damages are any actual costs or expenses we have to pay as a result of the supplier failing to perform as set out in the contract.

2.11 Security

In all major contracts the appropriate Strategic Director, Strategic Director of Performance and Development and Strategic Director of Resources, will consider whether we should ask for security and, if so, the type and amount. Security would usually be a guarantee from a parent company or bank (see paragraph 35).

2.12 Data Protection

All ordinary and major contracts must contain a clause which requires the supplier to comply with data protection legislation and to keep confidential any information supplied by the Council. A standard clause can be found in the Corporate Document Library in the Procurement Section

2.13 Freedom of Information

All ordinary and major contracts must contain a clause which requires the supplier, at no extra charge, to assist the Council in meeting our Freedom of Information obligations when requested to do so. A standard clause can be found in the Corporate Document Library in the Procurement Section

2.14 Equality in Contracting

All major and ordinary contracts must contain the standard clauses on equalities that have been adopted by the Council. Minor contracts must also contain a clause on equalities. These standard clauses and the Council's approach to equalities in contracting can be found in the Procurement Code of Practice.

2.15 Service Contracts and Staff Transfers

You must follow the Government's Code of Practice on the two-tier workforce whenever staff employed by the Council transfer to a new employer upon the award of a service contract by the Council. The Code of Practice protects the terms and conditions of transferring staff and ensures that any new staff employed to work on the Council's contract are offered employment terms which are no less favourable.

Whenever you are letting a service contract which may involve the transfer of Council staff to a new employer (a TUPE transfer) you must seek advice from the Strategic Director of Performance and Development.

Standard contract clauses on TUPE transfers and ensuring compliance with the Code of Practice can be found in the Corporate Document Library in the Procurement Section.

2.16 Criminal Record Bureau (CRB) Checks

You must require the supplier to arrange for CRB checks of any member of the supplier's staff or any sub-contractors who may come into contact with children or vulnerable adults. Where this is a likelihood, you must seek advice from the Strategic Director of Performance and Development. Clauses setting out this requirement must be included in the contract. Standard clauses can be found in the Corporate Document Library in the Procurement Section

2.17 Format of the contract

You need to consider the suitability and style of the terms, conditions and descriptions in the contract as well as the way it is presented. The Strategic Director of Performance and Development has approved standard formats for particular types of contracts. Details of these can be found either from your Contracts Co-ordinator or in the Corporate Document Library in the Procurement Section.

Some contract formats have been agreed nationally, for example, Joint Contracts Tribunal (JCT) contracts, and approved by the Strategic Director of Performance and Development for certain types of contracts. Changes to these formats agreed by the national organisation must be sent immediately to the Strategic Director of Performance and Development. If you want to adapt these formats to other types of contracts, you will need permission from the Strategic Director of Performance and Development.

Form 1

Application for exemption from Contract Standing Orders

Directorate:

Phone:

Contact officer:

Office address:

Name of proposed contractor:

Proposed start date:

Period of contract:

Total value of contract:

Details of goods, work or services:

Reason for applying:

(Please explain which Contract Standing Orders you are seeking to waive and why. Continue on a separate sheet if necessary.)

Strategic Director's signature

Date:

Decision

Conditions attached to approval (if any):

Application Refused/Approved

.....
Strategic Director of Performance & Development Strategic Director of Resources

Date.....

Date.....



FORM 2

Application to Vary the Recommended Insurance Levels

To:	1) Strategic Director of Performance & Development 2) Strategic Director of Resources	Date:	
From:		Phone:	

Directorate:			
Contact officer:		Phone:	
Legal Services Reference Number:			

Directorate reference number:	
Name of proposed contractor:	

Proposed start date:		Period of contract:	
Total value of contract:		Type: Major/Ordinary/Minor	

In order for a decision to be made it is essential that the nature of the risk and the reasons for a request to vary the insurance limits is understood.

Has the activity been risk assessed? Yes/No If so, please attach the assessment.

If the risk has not been formally assessed, please advise why it was considered unnecessary and outline the risks associated with the work in the box below.

Application to Vary the Recommended Insurance Levels

Reason for application. Please tick relevant box or boxes and ensure the supporting information is provided:

Tick Box	Reason	Supporting information to be provided
	Urgency	<ul style="list-style-type: none"> • The nature of the urgency. • Reasons why higher insurance limits would introduce an unacceptable delay.
	Risk considered nominal	<ul style="list-style-type: none"> • Risk assessment. • Assessment that maximum liability is unlikely to reach requested indemnity limits.
	No real competition	<ul style="list-style-type: none"> • Evidence that there is no alternative provider. • Risk assessment. • Evidence that proposed insurance limit is standard for the industry.
	Extending an existing contract	<ul style="list-style-type: none"> • Explain why it is in the County Council's interests to extend. • Risk assessment. • Comments on whether, if this were a new contract, the proposed limits would be acceptable.
	Cost considerations	<ul style="list-style-type: none"> • Risk assessment. • Evidence of increased cost of insurance cover to meet WCC normal requirements.
	A partnership arrangement	<ul style="list-style-type: none"> • Name of partner and nature of their contribution. • Risk sharing arrangements. • Cover held by proposed partner. • Explain why it is in the County Council's interests to have a lower insurance level. • Risk Assessment.
	Other	<ul style="list-style-type: none"> • Full details including Risk assessment.

Could the request to reduce limits for this contractor be prejudicial to other contractors meeting the CSO requirements in their quotation? Yes/ No

Please explain what revised limits you are requesting and the reasons. This should make reference to the risk assessment.

I request that the insurance limits for this contract should be amended to

Public Liability £.....
 Professional indemnity £..... (If PI cover is considered unnecessary please explain why)

Reasons (Please attach another sheet (s) if necessary)

Strategic Director's signature:		Date:	
--	--	--------------	--

DECISION

Approved

 Refused

 Approved with Conditions (See below)

Conditions attached to approval (if any):

Strategic Director of Performance & Development:		Date:	
---	--	--------------	--

Strategic Director of Resources:		Date:	
---	--	--------------	--

Guidance note 1

European Procurement Rules

1 Goods, work and services

If your contract for supplying goods, work or services will be worth more than the limits set out in schedule A, the contract may be governed by EU Directives and UK regulations. There are special rules for valuing contracts to see whether they have reached the limits (see below).

The limits are reviewed by the government and the current limits (see schedule A) apply from 1st January 2006.

The Strategic Director of Performance and Development has produced more detailed guidance on how the EC rules apply. This can be accessed through the Procurement Code of Practice.

If the contract covers a mixture of goods and services, whichever part has the greatest value will decide whether the contract is treated as a goods or services contract under the regulations.

2 Valuing contracts under European Procurement Rules

The value limits apply to individual contracts and groups of contracts with similar characteristics which are to be agreed in the same year. Contracts with similar characteristics have to be added together to see whether we have reached the value limits. This is to prevent organisations packaging similar contracts into small units to avoid the rules. If, for example, different directorates are buying computers in the same financial year, all those purchases must be added together to assess whether they are likely to reach the value limit.

You should work out individual contract values as follows.

- If the contract is part of a series or is renewable, its value will be:
 - the value given in the previous financial year (over a 12-month period); **or**
 - the estimated value to be given over the next 12 months from the date the goods, work or services are first provided.
- If the contract is for a fixed term of less than four years, the value will be the total value of the contract.
- If the contract has no end date or is for a fixed term of more than four years, the value will be the monthly value of the contract multiplied by 48.

If more than one of the above applies, use **the method which gives the highest value**. Again this is to prevent organisations by-passing the rules by choosing a calculation which puts a contract or group of contracts below the value limit.

Once you have worked out the value of each contract, add it to the value of other contracts with similar characteristics. If the value of a contract or group of contracts with similar characteristics is greater than the value limit, you must follow the requirements of the European Procurement Rules.

3 Prior information notices

Under the regulations all our tendering activities must receive maximum publicity. We must publish a prior information notice (PIN) in the Official Journal of the Economic Community each financial year to show the goods, work or services we **intend** to invite offers for which are over the PIN value limits. These values are also set out in schedule A.

This notice warns suppliers of the opportunities for contracts in the coming financial year. The PIN should cover contracts of a similar nature and the values are worked out in the same way as set out in 2 above.

We need to be aware well in advance of all contracts you expect to agree during the financial year and their estimated value so that we can put the correct information in the PIN.

4 Advance notice of contracts for PINs

Each cost centre manager is responsible for telling his or her financial services manager the estimated value of the contracts which will be agreed by the directorate in the next financial year. The contracts should be broken down into the categories set out in **Schedule B**.

The categories shown in **Schedule B** are those where, based on current information, a PIN might be necessary. They are not a complete list of all the categories of contracts which may fall under European Procurement Rules. The categories may change in future.

The financial services manager gathers the information on the value of each directorate's contracts in each category and then passes this information to the Strategic Director of Performance and Development before **31 January**.

The Strategic Director of Performance and Development then assesses the information from all the directorates to see whether a PIN is required for any categories of contracts. He or she then tells the financial services managers whether any PINs are necessary. They in turn pass this information to the cost centre managers.

Directorates should be able to use this information to help them to decide whether joint contracting processes with other cost centres would be of benefit.

Schedule A

European Procurement Rules – value limits (effective from 1 January 2006)

	Value limit	PIN limit
Works	£3,611,474	£3,611,474
Goods (supplies)	£144,459	£513,166
Services	£144,459	£513,166

Schedule B

Works

Type of work	Estimated value
Site investigation	
Demolition work	
Site formation and clearance work	
General building and civil engineering work	
Roadwork, including cycle paths and anti-skid surfacing	
Sport and recreation installations including water-sports facilities, parks and open spaces	
Building construction	
Civil engineering – building roads and bridges	
Installing fixtures and fittings, plumbing, electrics, phones, heating, gas fittings, lifts and fire alarms	
Educational building – pre-school, schools	
Hospital and residential old people's homes	
Administrative buildings	
Stadium and sports facilities	

Supplies (goods)

Type of supplies	Estimated value
Agricultural – seeds, cattle, sheep, poultry, wool, eggs and agricultural services	
Forestry products - logging and related services – wood	
Fish and other fishing products, fishing services and live fish	
Coal	
Crude petroleum and natural gas	
Other mining and quarrying products –stone, sand, clay, gravel, chippings, tarmac, chemicals, fertilizer, and rock salt	
Food products and drinks, meat, poultry, fish, vegetables, fruit juice, fruit, food oils, milk products, flour and flour products, sugar, cocoa, spices, and alcoholic drinks	
Textiles	
Clothes – workwear and other clothes	
Leather and leather products	
Wood products – windows, fences and so on	
Pulp and paper products	
Printed materials and recorded media books, newspapers, sound recordings, cheque forms, plate-making services and so on	
Refined petroleum products – petrol, diesel, oil	
Chemicals – rubber and plastic products, including tyres, hoses, gym mats, polythene products and so on	
Other non-metallic mineral products glass, china, clay bricks, concrete and so on	

Supplies (goods) continued

Type of supplies	Estimated value
Basic metals – tubes, metal pipes and so on	
Metal products, except machinery and equipment – cutlery, locks, tanks, nails, welding materials, sinks, baths and so on	
Machinery and equipment – engines, pumps, Christmas trees, furnaces and so on	
Office machinery and computers, calculators, photocopiers, disk drives and so on	
Electrical machinery, electric motors and lamps and so on	
Radio and television	
Medical – syringes, oxygen kits, sterilisers and so on	
Motor vehicles and trailers	
Other transport – boats	
Furniture	

Services

Type of services	Estimated value
Vehicle and equipment maintenance and repairs	
Financial services, insurance services, central banking services, and banking and investment services other than in connection with securities or other financial documents	
Market research and public opinion polling services	
Accounting, book-keeping, and auditing services	
Research and development services which benefit only us – services for our use which we alone have paid for	
Management consultancy and related services, but not arbitration and conciliation services	
Architectural services - engineering services, town planning and landscape architectural services, related scientific and technical consulting services, technical testing and analysis	
Building cleaning and property management services	
Computer and related services	
Publishing and printing on a fee or contract basis	
Sewage and rubbish disposal services – sanitation and similar services including nature and landscape protection services	
Land transport services - including bus, taxi, car rental, courier and freight services	
Telecommunication services, including- phones, radio and television	

Services continued

Type of services	Estimated value
Mail transport	
Advertising	
Waste disposal	
Window cleaning	
Street lighting	
Payroll	
Traffic management	
Landscape design	
Road safety	
Road maintenance	
Design services	

Guidance note 2

Common Signs of Employment Status

Common signs of employment	Common signs of self-employment
The worker supplies only his labour and uses someone else's facilities.	The worker supplies labour, equipment and materials for the job.
The worker does not risk his own money and there is no possibility he will suffer financial loss.	The worker quotes a fixed price for the job and will pay extra costs himself if the quote is too low.
The worker has no business organisation and has to personally do the job.	The worker has the right to hire other people to do the job. Those people answer to the worker and are paid by the worker through his business accounts.
The worker is paid by the hour, day, week and so on, in the same way as other employees.	The worker is paid a fixed amount for the job however long it takes. But he is free to negotiate his own rate.
An employer has the right to control what the worker has to do, and when, where and how it is to be done.	Within an overall deadline the worker has the right to decide how and when the work will be done.
The worker is hired under contract of service.	The worker is hired under a contract for service.
The worker works only for employers. (It may be one or more employers under PAYE arrangements.)	The worker provides similar services to many organisations. He manages his own business, advertises his services, and pays his own costs for insurance and overheads. He sends business accounts to the Inland Revenue each year.

These signs should provide the answer in most cases.

If you are in doubt, get further advice.

1. Common mistakes

- *Anyone who receives a one-off payment for wages, tips and so on must report it to the Inland Revenue.*

This is not so. As employer or payer, we have to deal with the payments properly and pay tax and national insurance on them. We cannot rely on the individual giving the information to the Inland Revenue.

- *Mr Smith is self-employed but works for us so we can pay in cash without tax or national insurance being taken off.*

How we treat this depends on the work done. If the work done is not one of the services Mr Smith normally provides in his self-employed business, treat him as an employee under PAYE.

Mr Smith can get RD 950 from the Contribution Agency and an NT Code from the Tax Office. But we must still pay his national insurance and we must pay him through Payroll.

- *Mrs Jones used to be our employee and we have re-engaged her as a consultant so we can pay her without tax or national insurance being taken off.*

Unless Mrs Jones has properly set up a business as a consultant providing the services you need, you must treat her as an employee and pay her through Payroll. You may also need to review her pension payment.

2. Helpful hints

- Contracts of service are normally charged to pay codes as the individuals are classed as employees.
- Contracts for services are normally charged to supplies and services. If you had engaged a firm to do the work, this is where you would have charged their costs.
- Do not consider paying anyone for work done through Orders and Payments unless:
 - they have been hired under a contract for services;
 - the services they have provided are a normal part of their self-employed business; **and** you have checked their tax arrangements.
- If you make any payment to someone which is more than their costs in performing a task, the Inland Revenue must be made aware of that payment through Payroll or through their business accounts. We are responsible for treating the payment correctly.
- Make sure the Orders and Payments indicator is set up for construction industry arrangements.
- If you are paying a business for supplying temporary staff, pay through Orders and Payments. You are paying the business not the individual.

APPENDIX 2

Warwickshire County Council

Contract Standing Orders for Schools

Rules for buying goods, materials, work, or services



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Contract Standing Orders for Schools (CSOs)

Section 1 Purpose and scope

1.1 Purpose

CSOs help us to:

- get value for money;
- keep within the law;
- maintain standards of conduct;
- be fair to our suppliers; and
- show the public that we are honest.

Our council approves the overall framework of CSOs. Any codes of practice or guidance provided by our Strategic Director of Performance and Development or the Strategic Director of Resources form part of CSOs.

Our CSOs are in accordance with the council's Section 48 Scheme.

1.2. Scope

CSOs apply to **all** contracts with outside organisations or people unless the Strategic Director of Performance and Development and Strategic Director of Resources agree otherwise. The county council is not an 'outside organisation' for these purposes.

A contract is any agreement to provide goods, work or services in exchange for payment. This includes

- placing orders;
- all contracts for selling property by formal tender;
- loan or leasing arrangements;
- employing outside experts or consultants under contracts **for** services;
- tenders for subcontracts; and
- contracts where the school is the supplier.

Supplier means any person or organisation providing the goods, work or services.

Section 2 Types of contract

2.1 Definitions

The different types of contracts are as follows.

Minor contracts A contract to provide goods, work or services to the school for less than £10,000.

Ordinary contracts A contract to provide goods, work or services to the school for between £10,000 and £100,000.

Major contracts A contract to provide goods, work or services to the school for £100,000 or more.

Supply contracts A contract where the school is the supplier.

It is important to understand that a contract exists even where you make a one-off payment for goods; there does not need to be an on-going service for a contract to be formed.

2.2 Valuing minor, ordinary and major contracts

If the contract is to last for more than a year (including extension periods), the total value is:

- the yearly value of the contract; multiplied by
- the period of the contract and any extension periods.

For example, a contract for three years with a yearly value of £30,000 has a total value of £90,000. A contract for three years with a yearly value of £30,000 and power to extend for a further two years has a total value of £150,000.

Correct valuation of a contract is very important. The TOTAL value of a contract that runs over a number of years may place your contract in a different category (minor, ordinary, major (above or below the EU thresholds)). This will affect the procedure that you must follow in order to let the contract.

2.3 Procedures for agreeing contracts

All contracts must be within relevant UK and European laws

Minor contracts must also meet the requirements set out in **appendix 1**.

Ordinary contracts must also meet the requirements set out in **appendix 2**.

Major contracts must also meet the requirements set out in **appendix 3**.

Supply contracts must also be approved in line with **appendix 4**.

Section 3 Responsibilities

3.1 Governing Body (responsibilities for their school)

A Governing Body may delegate any or all of the responsibilities set out below, in whole or in part, to their headteacher:

- **To follow** CSOs and any codes of practice, guidance or instructions provided by the Strategic Director of Performance and Development and the Strategic Director of Resources.
- **To follow** all relevant UK and European laws.
- **To follow** Financial Standing Orders and make sure effective systems are in place to control budgets properly.
- **To work with** the Strategic Director of Resources to ensure that an appropriate financial evaluation is undertaken of potential suppliers to ensure that the School and the County Council manages risk effectively.
- **To get** legal, financial and other advice in good time and to make sure that contracts are legal and the school can carry out our duties under them.
 - You **must consider** obtaining legal and/or financial advice from the Strategic Director of Performance and Development or the Strategic Director of Resources, respectively, for contracts with a **total value** of **£10,000** or more (i.e. Ordinary and Major contracts (whether or not EU procurement rules apply). The greater the **total value** of the contract (see paragraph 2.2 above for how to assess the total value) and/or the greater the **risk** a School and/or the Council is exposed to, the more likely it is that legal and/or financial advice should be obtained.
 - You **may** obtain legal and/or financial advice from the Strategic Director of Performance and Development or the Strategic Director of Resources, respectively, for any value of contract if you have concerns about the risk a School or the Council may be exposed to under its Terms); where you have any other concerns in relation to the contract; or for any contract that is ‘unusual’ in any respect (e.g. bespoke contracts, contracts that are not let through ESPO, or contracts that are not let through any other standard contracting arrangements that the Council has). In relation to ‘unusual’ contracts, in particular, it is highly likely that you would want to obtain legal and financial advice.
 - You **must obtain** legal and/or financial advice from the Strategic Director of Performance and Development or the Strategic Director of Resources, respectively, for any supply contract you are considering tendering for.
- **To make sure** that the school deals with contracts and tendering procedures in line with CSOs and financial standing orders.
- **To make sure** that the school has systems in place to avoid fraud and corruption.
- **To keep a list of the members of staff** responsible for dealing with tenders and contracts. This list must show the extent of the powers of the members of staff.

- **To provide** any information which the Strategic Director of Performance and Development or the Strategic Director of Resources needs to help us meet legal requirements and CSO procedures.
- **To appoint** a Contracts Officer for the school.
- **To make sure** that all relevant members of staff have received CSO training approved by the Strategic Director of Performance and Development by 1 April 2000. If other members of staff are given the power to agree contracts after 1 April 2000 they must be trained before receiving those powers.
- **To make sure** that all suppliers have in place sufficient insurance cover as appropriate to the contract and in relation to ordinary and major contracts, to make sure that the insurance requirements set out in Appendix 5 are met.
- **To make sure** that any members of staff involved in contract negotiations are sufficiently skilled and understand the legal parameters that apply to contract negotiations.
- **To make sure** that all suppliers comply with all applicable Health and Safety legislation.

3.5 Contracts officers

The headteacher of each school should choose a member of staff to act as its 'contracts officer' and should tell the Strategic Director of Performance and Development the name of that person.

The contracts officer is responsible for keeping the school's register of contracts.

3.6 Authorised members of staff

The headteacher must have a written record of the members of staff in the school who are responsible for agreeing contracts and the extent of the powers of those members of staff. Authorised members of staff must:

- make sure that the headteacher or governing body has given approval for all contracts they are responsible for;
- make sure that any actions taken are within their powers;
- check that there is enough in the budget to cover the financial commitment they are making; and
- provide details of all the contracts they are responsible for to the contracts officer.

3.7 All staff

- To understand the procedures they must follow when agreeing contracts and ordering goods, work or services for us.
- To declare to their line manager any interest which could influence their judgement in contracting matters. Some staff must record their interest and their partner's interest in the Staff Register of Interests.

Section 4 Approving contracts

4.1 All contracts must be properly approved **before** they are signed. Approval can be in the form of:

- a decision of the governing body; or
- a decision within the powers given to the headteacher under the governing body's scheme of delegation;

and the following conditions must also be met.

- The contract must meet the requirements of CSOs.
- The contract must be competitively let unless an exemption from CSOs is obtained.
- The member of staff involved must have the power to deal with the particular contract.
- There must be enough in the budget to cover the financial commitment being made.

Section 5 General requirements

5.1 Contents of ordinary and major contracts

All ordinary and major contracts must be in writing and must meet the requirements set out in appendix 5.

5.2 Loans and leasing arrangements

You must not make loans or leasing arrangements (eg. a contract for a photocopier or hand drier) **without approval** from the -Strategic Director of Resources. You can apply to the Strategic Director of Resources through the financial services manager in the Children, Young People & Families Services directorate. Where you are unsure about the contract terms you should seek advice from the Strategic Director of Performance and Development.

5.3 Contracts under seal

All contracts under seal must be signed by a designated officer.

Designated officer means the Chief Executive, the Strategic Director of Performance and Development and any other officer authorised by either or both of them.

5.4 Certified contracts

If a supplier asks you to certify that the contract is legal (under the Local Government (Contracts) Act 1997), you must pass the contract to the Strategic Director of Performance and Development before signing it. You must also send details of the approval for the contract and any other relevant documents.

5.5 Other legal requirements

Some contracts must also follow the EU Procurement Rules (see **guidance note 1**).

Section 6 Access to information

- 6.1** You must not show tender or contract documents (or other information relating to them) to anyone who has a financial interest in the contract.
- 6.2** You must not give tenderers or contractors any information about the bids or the financial or business affairs of any other tenderer or contractor unless the law requires this.
- 6.3** Once the contract has been awarded the name of the successful tenderer and the value of the contract, will become information available to the public.
- 6.4** The headteacher may also choose to make available to the public the value of unsuccessful bids for a contract. However, you must not name the unsuccessful tenderers.

Section 7 Recording information

7.1 All contracts

The school **must keep proper written records** of:

- the different stages of the tendering process;
- the awarding of the contract;
- any information provided to tenderers or contractors; and
- any decisions made, together with the reasons for those decisions.

This helps us to provide any reports our auditors or central government ask for about our contracting processes and to meet any legal challenge.

7.2 Registers of contracts

The school **must keep:**

- a register of all ordinary and major contracts it has agreed; and
- a register of all contracts it has agreed where it is the supplier.

You must keep the registers separately as shown in forms 1 and 2 in the appendices.

You must make sure that major contracts are recorded in the Central Register of Contracts in the Performance and Development directorate. So, for example, a contract for £110,000 must be recorded in your school's register of contracts and the Central Register of Contracts.

Section 8 Storing documents

- 8.1** You must consider confidentiality when storing contracts and other information relating to tenders and agreements.
- 8.2** You must store all contracts (including relevant correspondence and other records) for at least six years after the contract comes to an end. Contracts made as a deed or under seal must never be thrown away.
- 8.3** Keep documents relating to unsuccessful or late tenders for at least two years from the date the successful contract is agreed.
- 8.4** You must not throw away documents without the Strategic Director of Performance and Development's permission if:
 - the documents relate to a particular contract or tendering process; **and**
 - there is a chance of legal action or a claim for personal injury or death.

Section 9 Approved supplier lists

9.1 The school may use approved supplier lists to:

- choose tenderers to bid for a contract; or
- buy one-off items.

You must not use approved supplier lists for contracts governed by the European Procurement rules. These contracts must be advertised.

9.2 Before drawing up an approved supplier list you should advertise and invite people to apply to become approved suppliers for the particular type of contract. When considering whether to include someone on the list you should look at:

- their past performance on similar contracts (quality and costs);
- their other commitments;
- their specialist experience in the type of products and services you are looking for; and
- their financial situation.

You may want to add other qualifications if you have a large number of possible suppliers.

9.3 Review your approved supplier lists every two years against the requirements set out above to assess whether a supplier should remain on or be added to the list.

9.4 You should start new approved supplier lists after **advertising** at least every five years, or earlier if the number of approved suppliers remaining on the list means there is little competition.

Section 10 Exemptions from tendering

10.1 We will only allow exemptions from Contract Standing Orders **in exceptional circumstances**. You must have permission from the Strategic Director of Performance and Development and the Strategic Director of Resources.

10.2 To apply for an exemption from tendering the headteacher must fill in **form 1** and send it to the Strategic Director of Performance and Development. You must allow plenty of time for the Strategic Director of Resources and Strategic Director of Performance and Development to consider your application and to allow for tendering if they refuse your application.

10.3 Examples of circumstances which **may** justify an exemption are:

- **urgency** - real emergencies - not delays in making arrangements to agree particular contracts;
- **no real competition** - the school must use market analysis to explain why there is only one supplier;
- **extending an existing contract** - it must be in our interests to negotiate with the existing supplier;
- **price control** – if the price is controlled by trade organisations or government order and there is no reasonable alternative;
- **repairs or parts** – if the only option is to repair or buy new parts for existing equipment or buildings and there is only one supplier; or
- **a partnership arrangement** – if the supplier is making a large contribution to the funding, and the work, goods or services could not be provided as economically without that contribution.

Section 11 Further information and help

11.1 If you require further information, guidance or support on any aspect of CSOs for Schools or procurement you may wish to consider the following resources:

- CSO training for Schools is available via the Council. Please contact Mary Mckay, Governor Training Manager (tel: 01926 413723; email:marymckay@warwickshire.gov.uk) or Mary Aitken, Governor Support Officer (tel: 01926 412115; email:maryaitken@Warwickshire.gov.uk).
- The Council's electronic procurement toolkit is expected to be available for schools by late Spring 2006. This contains more detailed guidance, policies, standard documentation, and further useful sources of information.
- A new unit, the Centre for Procurement Performance (CPP), has been set up by the Department for Education and Skills in order to identify and encourage the adoption of better procurement deals and to assist in delivering those savings opportunities to the education, skills and children and families system. In the event of any conflict between the guidance provided by the CPP and CSOs for Schools, you must comply with CSOs for Schools. Nevertheless, much useful information is available via the CPP website at: <http://www.dfes.gov.uk/cpp/index.shtml>
- The Department for Education and Skills have developed a Financial Management Standard (FMS) and toolkit that provides much useful information about the proper financial management of schools, including helpful information on good procurement practice. It is available at: www.ipfbenchmarking.net/consultancy_dfes_update/ However, in the event of any conflict between the guidance provided by the FMS and CSOs for Schools, you must comply with CSOs for Schools.

Appendix 1

Process for minor contracts (Total value below £10,000)

1.1 Written arrangements.

The school must make written arrangements to deal with minor contracts. These arrangements must meet the requirements set out in sections 1 to 10 of these CSOs. You must send a copy of your arrangements to the Strategic Director of Performance and Development by **1 December 1999**. If you change the arrangements, you must write and tell the Strategic Director of Performance and Development and send an amended copy.

1.2 Using Eastern Shires Purchasing Organisation (ESPO)

If there is an established ESPO contract or standard ESPO contracting arrangement use it as a measure to decide whether an alternative is more cost effective. Get quotations from ESPO and, if you are to carry out the tendering exercise, take the costs of doing this into account. You can get details and advice about ESPO from the Procurement Toolkit for Schools which will be available from Spring 2006.

1.3 Value for money

You must get proper value for money and consider the need for competition, efficiency and savings at all times. Get quotations if possible.

1.4 Authorisation

An authorised member of staff must sign the contract documents. The documents should clearly set out the name of the supplier, what the contract is for, and the terms and conditions of the contract. They should also show that there is suitable insurance to protect our interests.

1.5 Register of contracts

It is good practice to record all relevant details of minor contracts in the School's register of contracts, although this is not mandatory.

1.6 Records of contracts

You must keep full written records of each contract, including all the quotations and letters you have received, and notes of phone calls and meetings about selecting suppliers. You need to keep these records for the periods set out in section 8.

Appendix 2

Process for ordinary contracts (Total value of £10,000 to £100,000)

2.1 Using Eastern Shires Purchasing Organisation (ESPO)

If there is an established ESPO contract or a standard ESPO contracting arrangement use it as a measure to decide whether an alternative is more cost effective. Get quotations from ESPO and if you are to carry out the tendering exercise take the costs of the tendering exercise into account when deciding which option is more cost effective.

You can obtain further information about ESPO from the Procurement Toolkit for Schools which is expected to be available from late Spring 2006.

If you use ESPO, we will assume that your procedures for agreeing and awarding the contract have met CSOs. If using ESPO is not the best option, you must meet the requirements of CSOs.

2.2 European Procurement Rules

The European Procurement Rules may apply to ordinary contracts. If they do, your ordinary contracts must meet the detailed requirements of the regulations in the same way as major contracts. See guidance note 1.

2.3 Describing the service or goods

You must produce a description of the goods or services you need before you ask for prices. This will allow you to compare prices properly. The level of detail in your description will depend on the value and type of goods or services you are buying.

2.4 Approved formats

Check whether there is a format for entering the contract which has been approved by the Strategic Director of Performance and Development. Your contracts officer should be able to help you do this. If there is no approved format or you need to make changes to an approved format, send your draft or details of the changes to the Strategic Director of Performance and Development for approval. See appendix 5 for details of the content requirements in contracts.

The headteacher must make sure that the contracts with his or her school are:

- legal;
- in line with financial regulations;
- drafted properly;
- are appropriate; and
- are able to protect our interests fully.

2.5 Getting prices

There are no hard and fast rules about whether you should obtain at least three written quotes or go out to tender. However, two principal factors should influence your decision. In essence, the higher the **value** of the contract and/or the more **risk** the Council or the school is exposed to, the more likely it is that you should go out to tender rather than simply obtaining quotes. For

contracts valued at **£30,000** or above you should usually go out to tender unless there are compelling reasons why that is not appropriate.

Your decision either to go out to tender or to obtain at least three quotes should be documented with a written note that should be kept setting out your reasons for your preference. This is particularly important in the event that the value of the contract is £30,000 or above and you have decided that going out to tender is not appropriate,

Where you decide that you do not need to go out to tender, you must get prices in writing from at least three suppliers. For example, you may get prices from the catalogues of three separate suppliers.

Where you decide that you do need to tender for services you must either advertise, or use approved supplier lists in accordance with the rules and guidance set out in paragraph 2.6 below.

Please refer to the Procurement Toolkit for further information. The Toolkit will be fully available from Spring 2006.

2.6 Is there an approved supplier list?

Approved supplier lists have proved very useful in some areas. They can be an efficient way of identifying and keeping the interest of suppliers. You cannot use them for contracts governed by the European Procurement Rules as these contracts must be advertised.

If you decide to use an approved supplier list to choose which suppliers to invite to tender, you will need a system for selecting suppliers from the list. Your system must make sure that all suppliers on the list have the same opportunity over time to tender for work.

Review your approved supplier lists at least every two years to make sure that your suppliers still meet the standards you used to draw up the list. You should also consider whether there are any new suppliers to add to the list.

Every five years you should start the lists again by advertising in the local and relevant trade press and, if necessary, the EC Journal.

When considering whether to include a supplier on your list you must consider:

- their past performance on similar contracts (quality and cost);
- their financial situation;
- their experience and skills; and
- their technical capacity.

You can also consider other things as long as:

- they are relevant;
- they do not prevent fair competition; and
- they do not illegally discriminate between suppliers.

Collect your information from suppliers using a standard business questionnaire. This will make it easier to sift through the replies.

2.7 Advertising for suppliers

If the methods described above are not suitable for getting your tenders or quotations, or the European Procurement Rules apply, you will need to advertise in a relevant trade or professional

journal and, if necessary, the EC Journal. Collect your information from suppliers using a standard business questionnaire. Then use this information to select the suppliers you will invite to tender.

As with approved supplier lists, you should consider the supplier's:

- past performance on similar contracts (quality and cost);
- financial situation;
- experience and skills; and
- technical capacity.

2.8 *Selecting tenderers*

You will need to agree and record your method for selecting tenderers before you make any selection from an approved supplier list or place an advert. When deciding your selection process, remember that you must:

- treat all tenderers in the same way;
- keep the process clear and simple; and
- record all your selection decisions.

Use the information you collect on the standard business questionnaires as the basis of your assessment, but you may also ask for information from referees and from company searches.

Ask at least three suppliers to tender. You must let each of them know by post as soon as you have made a decision. You must not pass on the names or details of suppliers to anyone at any time during the tendering process.

In the selection of firms to be invited to tender for a particular contract, the following must be considered.

- Past performance on similar contracts (quality and cost)
- Financial situation
- Experience and expertise
- Technical capacity

2.9 *Asking for tenders or quotations*

You must treat everyone who makes a bid fairly and equally. You must get proper value for money and remember the need for competition, efficiency and savings.

2.10 *Inviting tenders*

Invite at least three suppliers to tender. Send them an invitation to tender together with the contract documents and a tender form (you can obtain standard documents and forms from the Procurement Toolkit for Schools which is expected to be available from late Spring 2006). You will also need to include instructions on when and how they must return their tenders.

Your invitation to tender needs to explain how we will deal with mistakes. If you want to know whether the supplier has received the invitation to tender, you must enclose a 'Tender received confirmation form'.

During the period allowed for preparing tenders, you must record all your communications with tenderers. If a tenderer raises a query during this period, you must pass it on to all tenderers together with your reply. Remember not to give the identity of the tenderer who has raised the query.

2.11 Returning tenders

Tenders can be returned by hand or by post. Tell your tenderers to use postal services that provide them with proof of postage and the time of sending. **Do not accept tenders sent by fax.**

When you receive a tender, stamp or write the date and time on the packaging. Do not open any of the tenders until the final deadline for receiving them. Keep them in a safe place.

If you open a tender by mistake before the deadline, write down how this has happened and attach it to the packaging. Re-seal the tender immediately and do not tell anyone else about its contents.

If you receive fewer tenders than expected, do not contact tenderers to ask whether they have sent one in.

2.12 Late tenders

You should normally reject tenders which you receive after the deadline. But in exceptional circumstances a headteacher can accept a late tender. This only applies if:

- you have not opened any tenders; **and**
- you have proof that the tender was posted in enough time to meet the deadline (for example, the postmark date is the day before the deadline for a first-class delivery or is three days before the deadline for a second-class delivery). If the tender is delivered by hand, the person delivering it must explain why it is late. The headteacher must be satisfied with the reason. You must record this reason.

If you decide to accept a late tender, you must treat that tender in the same way as all other tenders. You must record full details of your decision to accept the late tender on file.

If you decide to reject the late tender, you should leave the tender on file, unopened, for two years. You can then destroy it.

2.13 Opening tenders

Agree a time for opening the tenders before the suppliers return them to you. Try to open the tenders as soon as possible after the deadline for returning them. If a delay becomes necessary, the authorised member of staff must agree to this and the reason must be recorded. Never extend the deadline for returning tenders or delay the time for opening them to allow for late tenders.

The authorised member of staff must make sure that the procedures for opening tenders are followed and that the correct records and documents are completed. Open the tenders in front of at least two members of staff.

You must open all tenders at the same session. Open them one at a time. Then each member of staff must sign and date them. Record the details of each tender on a tender return form. Each member of staff must sign and date the form.

The members of staff must sign each page of the tender form unless it is very long. In this case, they only sign the pricing pages.

Once the tenders have been opened, store them again in a safe place.

2.14 Assessing the tenders

Before assessing the tenders, you need to check that each part of them meets the requirements of your goods or service description. You also need to make sure that there are no major mistakes and that nothing is missing.

Then check the accuracy of the figures in each tender. If you find minor mistakes which do not affect the overall price or the goods or service description, contact the tenderer and ask them to confirm the correct figures in writing.

Keep a record of all mistakes and attach it to the tender documents together with any corrections you have agreed with the tenderer.

You need to decide and record how you will assess the tenders before you start your assessments. Headteachers must make sure that assessment criteria:

- do not prevent fair competition;
- do not illegally discriminate between tenderers; and
- meet any relevant UK and EU laws.

Your assessment criteria might include:

- price;
- technical standard;
- experience and skills;
- practical considerations;
- financial proposals;
- contract management;
- quality management proposals; and
- delivery proposals.

Assessment details are strictly confidential, so you must not pass them on to anyone else.

Once you have completed the assessment, you need to produce a report showing:

- the result of your assessment of each tender;
- a comparison of assessment results; and
- your recommendation for who should get the contract.

2.15 Accepting and rejecting tenders

The authorised member of staff should accept the tender which is in our best interests. This will usually be:

- the lowest tender; or
- the tender which will be of most economic benefit to us. In this case you should explain in writing why you have chosen that tender and place your note on file before accepting the tender.

You should always consider whether your recommendation for awarding the contract should be put before the governing body or one of its committees **before** contacting the successful tenderer.

Write and tell the successful tenderer your decision as soon as possible **after you have received all necessary approvals**. Let unsuccessful tenderers know your decision after you have told the successful tenderer. If unsuccessful tenderers ask why their tender was not successful, you can

tell them in general terms about the areas of their tender which scored poorly in your assessment. Do not give them details of the other tenders.

The name of the successful tenderer and the value of their bid will be made available to the public (see **section 6**).

2.16 Selecting the supplier

The supplier you choose must be the one who offers us the best value-for-money solution. This applies whether you get prices by quotes or by more formal tendering processes. In most cases you will choose the supplier whose price is the lowest. But in some circumstances you may prefer higher-priced options because they offer best value for money. In these situations you should record on file your reasons for not accepting the lowest price before you tell the supplier your decision.

2.17 Negotiating

It is the responsibility of the Governing Body to ensure that any members of staff involved in contract negotiations are sufficiently skilled and understand the legal parameters that apply.

If it is in our best interests, the authorised member of staff may negotiate with tenderers for more favourable prices or terms. The following conditions apply to negotiating.

- You must not discuss one tenderer's detailed prices, conditions or terms with another tenderer.
- You must not give anyone information about our criteria for accepting a tender or any other matter connected with the contract or tenders without permission from the headteacher.
- If negotiations lead to a change in the description of the goods, work or services or other terms, you must invite everyone who has provided a tender to re-tender on the basis of the revised contract.
- If other tenderers as well as the tenderer who sent in the lowest price are to be approached the Strategic Director of Resources must agree that negotiations can take place.

If the contract falls under EU Procurement Rules negotiations must not take place without permission from the **Strategic Director of Performance and Development and the Strategic Director of Resources**.

2.18 Ordering and entering into a written contract

Once you have selected a supplier, you need to complete the contractual arrangements. The contract should meet the requirements set out in appendix 5. Make sure the contract is signed by a properly authorised member of staff.

2.19 Information to tenderers

You must not give tenderers or suppliers any information about the bids or affairs of any other tenderer or contractor unless the law says you must do this. The information you receive is confidential.

The only information you should make public is the name of the successful tenderer and the value of their bid. However do not release this information until the contract has been awarded.

The headteacher may decide to make available the amounts of the other bids received. This information should not include the names of the unsuccessful tenderers. Headteachers should make sure that if they are planning to release this information, tenderers know this at the start of the process.

2.20 *Register of contracts*

You must record the details of all ordinary contracts in the school's register of contracts.

2.21 *Records of contracts*

You must keep written records of each contract, including all the quotes and letters you have received, and notes of phone calls and meetings about selecting suppliers. You need to keep these records for the periods set out in section 8.

Appendix 3

Process for major contracts

3.1 Using Eastern Shires Purchasing Organisation (ESPO)

If there is an established ESPO contract or a standard ESPO contracting arrangement use it as a measure to decide whether an alternative is more cost effective. Get quotations from ESPO and if you are to carry out the tendering exercise take the costs of the tendering exercise into account when deciding which option is more cost effective.

You can get obtain further information about ESPO from the Procurement Toolkit for Schools which is expected to be available from late Spring 2006..

If you use ESPO we will assume that your procedures for agreeing and awarding the contract will have met CSOs. If using ESPO is not the best option you must meet the following requirements.

3.2 European Procurement Rules

If the EU Procurement Rules apply you must follow their the detailed requirements. Single major contracts which have a value below the relevant EU limit may still need to follow the rules (see guidance note 1).

3.3 Describing the service or goods

You must produce a detailed description of the goods, work or services you need before you start the tendering process. You also need to prepare a contract with terms and conditions, tender instructions and a tender form (you can obtain standard documentation from the Procurement Toolkit for Schools which is expected to be available from late Spring 2006). Your description must include enough detail to allow us to control the quality, cost and time of performance.

3.4 Approved formats

Check whether there is a format for entering the contract which has been approved by the Strategic Director of Performance and Development. Your contracts officer should be able to help you do this. If there is no approved format or you need to make changes to an approved format, send your draft or details of the changes to the Strategic Director of Performance and Development for approval. See appendix 5 for details of the content requirements in contracts.

Each headteacher must make sure that the contracts with his or her school are:

- legal;
- in line with financial regulations;
- drafted properly;
- are appropriate; and
- are able to protect our interests fully.

3.5 Looking for suppliers

You must advertise all contracts unless there is a relevant approved supplier list from which you can contact tenderers.

3.6 *Is there an approved supplier list?*

Approved supplier lists have proved very useful in some areas. They can be an efficient way of identifying and keeping the interest of suppliers. However, you cannot use them for contracts governed by the EU Procurement Rules as these contracts must be advertised.

If you decide to use an approved supplier list to choose which suppliers to invite to tender, you will need a system for selecting suppliers from the list. Your system must make sure that all suppliers on the list have the same opportunity over time to tender for work.

Review your approved supplier lists at least every two years to make sure that your suppliers still meet the standards you used to draw up the list and whether there are any new suppliers to add to the list.

Every five years you should start the lists again by advertising in the local and relevant trade press and, if necessary, the EU Journal.

When considering whether to include a supplier on your list you must consider:

- their past performance on similar contracts (quality and cost);
- their financial situation;
- their experience and skills; and
- their technical capacity.

You can also consider other things as long as:

- they are relevant;
- they do not prevent fair competition; and
- they do not illegally discriminate between suppliers.

Collect your information from suppliers using a standard business questionnaire. This will make it easier to sift through the replies.

3.7 *Advertising for suppliers*

If your contract will fall under EU Procurement rules, you must advertise in a relevant trade or professional journal and the EU Journal. Collect your information from suppliers using a standard business questionnaire. Then use this information to select the suppliers you will invite to tender. As with approved supplier lists, you should consider the supplier's:

- past performance on similar contracts (quality and cost);
- financial situation;
- experience and skills;
- technical capacity.

3.8 *Selecting tenderers*

You will need to agree and record your method for assessing applications before you advertise.

When deciding your assessment procedure, remember that you must:

- treat all tenders in the same way;
- keep the process clear and simple; and
- record all your selection decisions.

Use the information you collect on the standard business questionnaires as the basis of your assessment, but you may also ask for information from referees and from company searches.

Ask at least three suppliers to tender. You must let each of them know by post as soon as you have made a decision. You must not pass on the names and details of suppliers to anyone at any time during the tendering process.

In the selection of firms to be invited to tender for a particular contract, the following must be considered.

- Their past performance on similar contracts (quality and cost).
- Their financial situation.
- Their experience and expertise.
- Their technical capacity.

3.9 *Inviting tenders*

Invite at least three suppliers to tender. Send them an invitation to tender together with the contract documents, and a tender form (you can obtain standard documentation from the Procurement Toolkit for Schools which is expected to be available from late Spring 2006). You will also need to include instructions on when and how they must return their tenders. Your invitation to tender needs to explain how you will deal with mistakes. If you want to know whether the supplier has received the invitation to tender, you must enclose a 'Tender received confirmation form'.

During the period allowed for preparing tenders you must record all your communications with tenderers. If a tenderer raises a query during this period, you must pass it on to all tenderers together with your reply. Remember not to give the identity of the tenderer who has raised the query.

3.10 *Returning tenders*

Tenders can be returned by hand or by post. Tell your tenderers to use postal services that provide them with proof of postage and the time of sending. **Do not accept tenders sent by fax.**

When you receive a tender, stamp or write the date and time on the packaging. Do not open any of the tenders until the final deadline for receiving them. Keep them in a safe place. If you open a tender by mistake before the deadline, write down how this happened and attach it to the packaging. Re-seal the tender immediately and do not tell anyone about its contents.

If you receive fewer tenders than expected do not contact tenders to ask whether they have sent one in.

3.11 *Late tenders*

You should normally reject tenders which you receive after the deadline, but in exceptional circumstances the headteacher with the agreement of the Strategic Director of Performance and Development can accept a late tender. This only applies if:

- you have not opened any tenders; **and**
- you have proof that the tender was posted in enough time to meet the deadline (for example, if the postmark date is the day before the deadline for a first-class delivery or is three days before the deadline for a second-class delivery). If the tender is delivered by hand, the person delivering it must explain why it is late. The headteacher and the

Strategic Director of Performance and Development must also be satisfied with the reason . You must record this reason.

If you decide to accept a late tender, you must treat that tender in the same way as all other tenders.

If you decide to reject the late tender, leave the tender on file, unopened, for two years. You can then destroy it.

3.12 Opening tenders

Agree a time for opening the tenders before the suppliers return them to you. Try to open the tenders as soon as possible after the deadline for returning them. If a delay becomes necessary, the headteacher must agree to this and the reason must be recorded. Never extend the deadline for returning tenders or delay the time appointed for opening them to allow for late tenders.

The authorised member of staff must make sure that the procedures for opening tenders are followed and that the correct records and documents are completed. Open the tenders in front of at least one member of staff from the school and an officer from Law and Governance authorised by the Strategic Director of Performance and Development to attend tender openings for major contracts as his representative..

You must open all tenders at the same session. Open them one at a time. Each person present must sign and date them. Record the details of each tender on a tender return form. Each person present must also sign and date the form.

They must sign each page of the tender form unless it is very long. In this case they only sign the pricing pages.

Once the tenders have been opened, store them again in a safe place.

3.13 Assessing the tenders

Before assessing the tenders, you need to check that each part of them meets the requirements of your goods, work or service description. You also need to make sure that there are no major mistakes and that nothing is missing.

Then check the accuracy of the figures in each tender. If you find minor mistakes which do not effect the overall price of the goods or service description, contact the tenderer and ask them to confirm the correct figures in writing. Keep a record of all mistakes and attach it to the tender documents together with any corrections you have agreed with the tenderer.

You need to decide and record how you will assess the tenders before you start your assessments. The headteacher must make sure that the assessment criteria:

- do not prevent fair competition;
- do not illegally discriminate between tenders; **and**
- meet any relevant UK and EU laws.

Your assessment criteria might include:

- price;
- technical standard;
- experience and skills;
- practical considerations;

- financial proposals;
- contract management;
- quality management proposals; and
- delivery proposals.

Assessment details are strictly confidential so you must not pass them on to anyone else.

Once you have completed the assessment you need to produce a report showing:

- the result of your assessment of each tender;
- a comparison of assessment results; and
- your recommendation for who should get the contract.

3.14 Accepting and rejecting tenders

The headteacher should accept the tender which is in our best interests. This will be:

- the lowest tender, or
- with the approval of the Strategic Director of Resources the tender which will be of the most economic benefit to us.

You should always consider whether your recommendation for awarding the contract should be put before the governing body or one of its committees **before** contacting the successful tenderer. For contracts that are not subject to the full EU procurement rules you must write and tell the successful tenderer your decision as soon as possible **after you have received all necessary approvals**. Let unsuccessful tenderers know your decision after you have told the successful tenderer. If unsuccessful tenderers ask why their tender was not successful, you can tell them in general terms about the areas of their tender which scored poorly in your assessment. Do not give them details of the other tenders.

The name of the successful tenderer and the value of their bid will be made available to the public (see **section 6**).

If your contract is at or above the EU thresholds, please refer to guidance note 1, below.

3.15 Selecting the supplier

The supplier you choose must be the one who offers us the best value-for-money solution. In most cases you will choose the supplier whose price is the lowest. However, in some circumstances you may prefer higher-priced options. In these situations you should record on file your reasons for not accepting the lowest price before you tell the supplier of your decision.

3.16 Negotiating

It is the responsibility of the Governing Body to ensure that any members of staff involved in contract negotiations are sufficiently skilled and understand the legal parameters that apply.

The authorised member of staff must get the Strategic Director of Resource's permission to negotiate with tenderers for more favourable prices or terms. The following conditions apply to negotiating.

- You must not discuss one tenderer's detailed prices, conditions or terms with another tenderer.

- You must not give anyone information about our criteria for accepting a tender or any other matter connected with the contract or tenders without permission from the headteacher.
- If negotiations lead to a change in the description of goods or services or other terms, you must invite everyone who has provided a tender to re-tender on the basis of the revised contract.

If the contract falls under European Procurement Rules negotiations must not take place without permission from the Strategic Director of Performance and Development and the Strategic Director of Resources.

3.17 Entering into a written contract

Get all the approvals you need under CSOs (see sections 3, 4 and 5) before you tell the tenderer that their application has been successful. Make sure the contract is sent to the Strategic Director of Performance and Development to arrange signature.

3.18 Information to tenderers

You must not give tenderers or contractors any information about the bids or affairs of any other tenderer or contractor unless the law requires this. The information you receive is confidential.

The only information you should make public is the name of the successful tenderer and the value of their bid.

The headteacher may decide to make available the value of the unsuccessful bids. But this information should not include the names of the unsuccessful tenderers. The headteacher should make sure that if he or she is planning to release this information, tenderers know this at the start of the process.

3.19 Register of contracts

You must record the details of all major contracts in your school's register of contracts and make sure it is recorded in the Central Register of Contracts.

3.20 Records of contracts

You must keep full written records of each contract, including all the letters you have received and notes of phone calls and meetings about selecting suppliers. You need to keep those records for the periods set out in section 8.

Appendix 4

Contracts where the school is the supplier

CSOs also apply if you are supplying goods, work or services. Procedures will be different and will probably depend mostly on the person or organisation we are dealing with. But sections 1 to 8 of the CSOS will apply with the following differences.

Responsibilities of the headteacher

The headteacher must keep a list of all supply contracts and a list of the school's unsuccessful bids. He or she must record the details of **all** supply contracts in the school's register for supply contracts (see section 7.2).

Before the contract is signed:

- The Strategic Director of Performance and Development must confirm that we can legally enter into the contract before we provide a tender.
- The Strategic Director of Performance and Development must approve the terms and conditions.
- The Strategic Director of Resources must be satisfied that our bid is financially practical.
- There must be enough insurance to cover any liability we may have under the proposed contract.

Appendix 5

Contents of ordinary and major contracts

Every ordinary and major contract we enter into must be in writing and must set out the following:

5.1 Names and addresses

Our full name and address and the supplier's full name and address must be on the contract. If the supplier is a company, the contract should show its registered office address.

5.2 What the contract is for

This means the work, services or goods we are buying. This information will usually be set out in a specification which gives a description of the requirements or the desired results.

5.3 Price

This may be:

- a lump sum;
- a single rate; or
- several rates.

It may be impossible to define the price in advance. In this case you will need to draw up a pricing schedule which refers to the unit of pricing, quantities, and a fixed or index-linked price basis.

Do not review the prices of ongoing commitments more than once in any year unless the service is linked to prices or rates from statutory organisations and they are reviewed or adjusted at a fixed rate. Agree any change to prices in writing.

5.4 The programme or timescales

The contract should show the time and method for providing the services or goods. The dates for delivery and completing the work must be set out clearly.

5.5 A suitable quality standards for goods and materials

The contract must include any relevant standards and tests required. The level of detail will depend on the type and value of the contract.

5.6 Standards and codes to be followed

The contract should comply with all relevant EU and UK laws, internal council rules (including contract standing orders and financial standing orders), and good practice. It must put the responsibility on the supplier to meet all laws, even if they are not specifically listed. Not knowing the law is no defence. Other standards and codes should be dealt with in the conditions of contract or the description of service.

5.7 Insurance

Governing Bodies are responsible for ensuring that the supplier arranges and maintains the following minimum insurances:

In all cases

- **Public liability – insurance at least £5 million.** Suppliers often try to argue that they do not have insurance of this level or try to limit their liability to the total amount to be paid under the contract. This is not acceptable. Tell contractors about our insurance requirements in your tender documents.

Public liability insurance of over £5 million should be considered when

(i) the activity could be regarded as hazardous with a high potential for an incident occurring (eg. involving work of a structural nature or involving the application of heat) and

(ii) the situation involves high potential exposure to injury or serious property damage (eg. high value buildings / contents)

If necessary:

- **Product liability insurance – at least £2 million**
- **Professional indemnity cover- at least £2 million.** Professional indemnity only applies if the policy is in force when the claim is made. The provision of insurance cover by the supplier should therefore extend beyond the contract period as a condition of contract.
- **Employer’s liability insurance-at least £5 million**
- **Motor policy for physical injuries – unlimited**
- **Motor policy for property damage – at least £5 million**

Our insurers have recommended these limits to make sure that we are protected properly. We will only allow the recommended levels to be varied in exceptional circumstances. If you want to change the recommended levels you must have permission from the Strategic Director of Performance and Development and the Strategic Director of Resources. To apply to vary the recommended insurance levels, the headteacher must fill in **form 2** and send it to the Strategic Director of Performance and Development for consideration.

You will also need to ask for a copy of the suppliers’ insurances before entering into the contract so that you can check that:

- The insurance policies cover the work being undertaken
- The insurance policies do not contain any conditions which would invalidate the insurance
- The supplier has paid the insurance premiums and the policies remain valid

To help you make these checks an Insurance Questionnaire is available from the Strategic Director Performance and Development.

If you need more advice on insurance, contact our Strategic Director of Performance and Development through the Insurance and Risk Management Officer. .

5.8 Anti-bribery and anti-corruption clauses

You need a clause which entitles us to cancel the contract and get back our costs as a result of doing so if the contractor tries to influence any of our officers. A standard clause is shown below. (This is not covered by Plain English Campaign’s Crystal Mark):

'The Council may cancel the contract and recover from the Contractor the amount of any loss resulting from the cancellation if at any time it becomes known to the Council that the Contractor or any person employed by the Contractor or acting on his behalf whether with or without the knowledge of the Contractor has

- (1) offered given or agreed to give any inducement or reward to any person or body in relation to the obtaining or execution of the contract or any other contract with the Council; or
- (2) favoured or discriminated against any person in relation to this or any other contract with the Council; or
- (3) committed an offence in relation to any contract with the Council under the Prevention of Corruption Acts 1889 to 1916 or section 117 (3) d Local Government Act 1972.

5.9 Transferring and subletting

Your contract must show clearly that the contractor cannot transfer or sublet any rights or responsibilities without our written permission. This helps us to make sure that suppliers do not use anyone who is unacceptable to us to perform the contract.

5.10 Liquidated damages

In all major contracts we need a clause which entitles us to liquidated damages if the supplier fails to meet the dates given in the contract. If you need more advice about this, please ask the Strategic Director of Performance and Development. Liquidated damages are any actual costs or expenses we have to pay as a result of the supplier failing to perform as set out in the contract.

5.11 Security

In all major contracts the headteacher, Strategic Director of Performance and Development and Strategic Director of Resources, will consider whether we should ask for security and, if so, the type and amount. Security would usually be a guarantee from a parent company or bank.

5.12 Information sharing and confidentiality

All ordinary and major contracts must contain the following clauses:

- When required to do so by the School's Governing Body, the Supplier shall assist the Governing Body and/or Warwickshire County Council at no additional charge in meeting its obligations under the Freedom of Information Act 2000 or any statutory modification or re-enactment therefore or any related guidelines or codes of practice.
- The Supplier shall comply in all respects with the provisions of the Data Protection Act 1998 as amended and will indemnify the Governing Body and Warwickshire County Council against all actions, costs, claims, proceedings or demands that may be brought or made against the Governing Body or Warwickshire County Council under the Act which arises from the improper use disclosure or transfer of personal data by the Supplier.
- The Supplier shall keep confidential all information belonging to or provided by the Governing Body or Warwickshire County Council in connection with this contract and shall not further use or disclose it to any third party without the express consent of the Governing Body and Warwickshire County Council or to the extent permitted by law.

5.13 Service Contracts and Staff Transfers

You must follow the Government's Code of Practice on the two-tier workforce whenever staff working on an existing contract transfer to a new employer upon the award of a service contract. The Code of Practice protects the terms and conditions of transferring staff and ensures that any new staff employed to work on the contract are offered employment terms which are no less favourable.

Whenever you are letting a service contract which may involve the transfer of staff to a new employer (a TUPE transfer) you must seek advice from the Strategic Director of Performance and Development.

5.14 Criminal Record Bureau (CRB) Checks

You must require the supplier to arrange for CRB checks of any member of the supplier's staff or any sub-contractors who may come into contact with children or vulnerable adults. Where this is a likelihood, you must seek advice from the Strategic Director of Performance and Development.

5.15 Format of the contract

You need to consider the suitability and style of the terms, conditions and descriptions in the contract as well as the way it is presented. The Strategic Director of Performance and Development has approved standard formats for particular types of contracts (see section 5).

Some contract formats have been agreed nationally, for example, Joint Contracts Tribunal (JCT) contracts, and approved by the Strategic Director of Performance and Development for certain types of contracts. Changes to these formats agreed by the national organisation must be sent immediately to the Strategic Director of Performance and Development. If you want to adapt these formats to other types of contracts, you will need permission from the Strategic Director of Performance and Development.

Form 1
Form to apply for exemption from Contract Standing Orders

Form 2
Form to apply for a variation to insurance levels

Guidance note 1

European Procurement Rules

1 Goods, work and services

If your contract for goods, work or services will be worth more than the limits set out in schedule A, the contract may be governed by EU Directives and UK laws. There are special rules for valuing contracts to see whether they have reached the limits (see below).

The limits are reviewed by the government on 1 January every two years and the current limits (see schedule A) apply until 31 December 2005.

The Strategic Director of Performance and Development has produced more detailed guidance on how the EU rules apply.

If the contract covers a mixture of goods and services, whichever part has the greatest value will decide whether the contract is treated as a goods or services contract under the regulations.

2 Valuing contracts under European Procurement Rules

The value limits apply to individual contracts and groups of contracts with similar characteristics which are to be agreed in the same year. Contracts with similar characteristics have to be added together to see whether we have reached the value limits. This is to prevent organisations packaging similar contracts into small units to avoid the rules. If, for example, you are buying computers in the same financial year, all those purchases must be added together to assess whether they are likely to reach the value limit.

You should work out individual contract values as follows.

- If the contract is part of a series or is renewable, its value will be:
 - the value given in the previous financial year (over a 12-month period); **or**
 - the estimated value to be given over the next 12 months from the date the goods, work or services are first provided.
- If the contract is for a fixed term of less than four years, the value will be the total value of the contract.
- If the contract has no end date or is for a fixed term of more than four years, the value will be the monthly value of the contract multiplied by 48.

If more than one of the above applies, use **the method which gives the highest value**. Again this is to prevent organisations by-passing the rules by choosing a calculation which puts a contract or group of contracts below the value limit.

Once you have worked out the value of each contract, add it to the value of other contracts with similar characteristics. If the value of a contract or group of contracts with similar characteristics is greater than the value limit, you must follow the requirements of the EU Procurement Rules.

3. Selecting the tenderer

For contracts that are subject to the full EU procurement rules you must write and tell ALL tenderers, both successful and unsuccessful your decision as soon as possible **after you have**

received all necessary approvals. A minimum mandatory standstill period of ten calendar days is required between communicating the award decision to ALL tenderers and entering into a contract with a tenderer.

Your notice of the award decision concerns only those tenderers who submitted a tender (valid or invalid). The notice must contain:

- the award criteria;
- where scores are being used, the score the tenderer obtained against those award criteria;
- where appropriate, the score the winning tenderer obtained; and
- the name of the winning tenderer.

Schedule A

European Procurement Rules – value limits (from 1 January 2006)

	Value limit	PINS
Works	£ 3,611,474	£3611,474
Goods (supplies)	£144,459	£513,166
Services	£144,459	£513,166

Guidance note 2

Appointing experts, consultants and other individuals

1 Introduction

There is often confusion about the status of people we ‘employ’ as experts, consultants or other individuals (for example, handymen and window cleaners) and whether they are under a ‘**contract for services**’ (as an independent contractor), **or** a ‘**contract of service**’ (as our employee).

It is often thought that costs for national insurance and pension contributions can be avoided by hiring people as self-employed consultants. This is not necessarily the case as the terms and conditions of our contract with them will govern their employment status.

2 Employment status

It is important to understand that employment status is not a matter of choice. You cannot simply decide to treat working arrangements as employment or self-employment. It depends on the work to be done.

If someone is taken on under a ‘**contract of service**’ they are an employee and must be paid through Payroll.

If someone is taken on under a ‘**contract for services**’ they are self-employed and paid through Order and Payments.

Sometimes it is a little more difficult. The table on page 70 gives detailed guidance. If you are not sure of someone’s employment status, please let Payroll have the full details. They will get a ruling from the local Tax Office.

The person you are taking on may suffer cashflow problems if we treat them as an employee, but they will always have their tax affairs in order at year end, and there is no chance that we will suffer penalties for treating their status incorrectly.

3 What should we do to treat experts, consultants and other individuals correctly?

- Make sure everyone in your school who takes on or pays people knows the rules and that you have routines to monitor the situation.
- Tell people the tax arrangements before you hire them.
- Do not pay anyone for work done out of petty cash or Orders and Payments unless it is to refund their costs. For example, if a member of staff paints a chair and you pay them £20 for doing the job plus paint, they should pay tax in the usual way unless they are a contractor.
- If possible agree terms and all arrangements to pay people in writing.
- If you are considering hiring someone under a ‘contract for service’:
 - make sure they have a properly set-up business which provides the services you need;
 - follow the financial regulations and contract standing orders;

- make sure you have a proper contract or written arrangement which sets out details of the work, performance and payment; and
- check that **none** of the common signs of employment in the table on page 70 apply.
- if you are in any doubt, contact Payroll.

4 *Common mistakes*

- *Anyone who receives a one-off payment for wages, tips and so on must report it to the Inland Revenue.*

This is not so. As employer or payer we have to deal with the payments properly and pay tax and national insurance on them. We cannot rely on the individual giving the information to the Inland Revenue.

- *Mr Smith is self-employed but works for us so we can pay in cash without tax or national insurance being taken off.*

How we treat this depends on the work done. If the work done is not one of the services Mr Smith normally provides in his self-employed business, treat him as an employee under PAYE.

Mr Smith can get RD 950 from the Contribution Agency and an NT Code from the Tax Office. But we must still pay his national insurance and we must pay him through Payroll.

- *Mrs Jones used to be our employee and we have re-engaged her as a consultant so we can pay her without tax or national insurance being taken off.*

Unless Mrs Jones has properly set up a business as a consultant providing the services you need, you must treat her as an employee and pay her through Payroll. You may also need to review her pension payment.

5 *Helpful hints*

- People who are paid on an hourly basis by a School should be classified as employed and paid through the payroll.
- Contracts of service are normally charged to pay codes as the individuals are classed as employees.
- Contracts for services are normally charged to supplies and services. If you had engaged a firm to do the work, this where you would have charged their costs.
- Do not consider paying anyone for work done through Orders and Payments unless:
 - they have been hired under a contract for services;
 - the services they have provided are a normal part of their self-employed business; **and**
 you have checked their tax arrangements.
- If you make any payment to someone which is more than their costs in performing a task, the Inland Revenue must be made aware of that payment through Payroll or through their business accounts. We are responsible for treating the payment correctly.

- Make sure the Orders and Payments indicator is set up for construction industry arrangements.
- If you are paying a business for supplying temporary staff, pay through Orders and Payments. You are paying the business not the individual.