

Code of Practice for Contracting and Commissioning Care and Support Services

1.0 Introduction

- 1.1 The Minimum Standards and Procedures for Tenders and Contracts are defined within the Constitution of the County Council and govern the purchase of commodities or services by the County Council. In most cases it is appropriate to tender competitively for such commodities or services, the main considerations being that the best price and quality are obtained from each purchase and that the County Council does not act in an anti-competitive manner.
- 1.2 The Heads of Service set out at Part 8 of this Constitution are responsible as identified therein for purchasing personal care and support services that are delivered to individual service users. By virtue of the Directorates eligibility criteria service users are vulnerable people who may receive a service over a protracted period of time and who rely on services being delivered consistently and without interruption. This places an additional consideration within the commissioning process which is to ensure that the provider market is stable and that long-term relationships between service providers and service users are maintained where this is appropriate.
- 1.3 This additional consideration will on occasion be at variance with the commissioning process required by the Minimum Standards and Procedures for Tenders and Contracts in relation to tendering and the letting of contracts. In order to maintain consistency of service provision and continuity of care or support for service users it may not be appropriate to strictly adhere to the requirement to tender on every occasion.
- 1.4 This Code of Practice sets out the circumstances in which Directorates are able to be exempted from the Minimum Standards and Procedures for Tenders and Contracts and the conditions that will apply when such exemption occurs.
- 1.5 This Code of Practice only applies to the commissioning of social care services. It should not be applied to the procurement of goods or other services by Services.

2.0 New Contracts

- 2.1 All new contracts will be tendered under the Minimum Standards and Procedures for Tenders and Contracts. Strategic commissioning and medium term financial planning must always allow adequate time for this process to be undertaken (a minimum of 180 days is recommended).
- 2.2 Expressions of Interest and the consequent selection of a minimum number of potential providers will not be required for Social Care contracts. Instead advertisements will be placed inviting all interested providers to submit a tender, and all tenders submitted will be evaluated against relevant criteria. This will ensure that tenders are received from the largest possible number of potential providers.
- 2.3 Exemptions to 2.1 and 2.2 above will only be permitted where:-
 - (i) there is insufficient time for the tendering process to occur, for instance in cases of late notification of a successful grant bid, or
 - (ii) where a Grant received by the County Council to purchase services is of a short-term nature, or renewed year on year, so that the administrative costs of tendering would be disproportionate to the value of any contract.

2.3.1 In both of these cases the Named Accountable Budget Holder will, with the support of the Contracts Team, be required to meet the criteria in 2.4 below in the selection of a provider prior to seeking the approval of the Heads of Service and the Service Cabinet Member in order to let the contract.

2.4 The criteria for selection, which must all be fulfilled, are as follows:-

(i) the service provider selected must have a proven, successful track record in the provision of similar services,

(ii) the service provider must be able to demonstrate that they can achieve the level of quality required in the provision of the service,

(iii) the service provider must be able to demonstrate that they can provide the service at a price which represents good value for money,

(iv) where more than one service provider would be able to meet the criteria listed above then the Named Accountable Budget Holder must be able to demonstrate that the provider selected was the most appropriate in relation to the Service Specification.

3.0 Contract Renewals

3.1 When contracts are due for renewal tendering will take place in accordance with the Minimum Standards and Procedures for Tenders and Contracts except in the circumstances described below. Strategic commissioning and medium term financial planning must always allow adequate time for this process to be undertaken (a minimum of 180 days is recommended).

3.2 It will be appropriate to renew an existing contract without tendering where the purpose of the Service conforms with the strategic aims of the County Council and where:-

(i) the Named Accountable Budget Holder can demonstrate that there are no other providers who would be able to provide the service at the time of renewal (and that this is supported by evidence of market testing such as inviting Expressions of Interest), or

(ii) the service is provided by a voluntary, charitable or not-for-profit organisation that has made a substantial investment in the service and where market testing has established that there is no other provider who could offer similar investment and that there would be no financial advantage to the County Council in tendering the service, or

(iii) the funding which is provided to a voluntary, charitable or not-for-profit organisation through a contract helps support the general activity of the organisation without which the organisation's viability might be at risk, and its closure would be to the detriment of the local community, or

(iv) disruption to service users and/or the market would result from a tendering exercise which would outweigh any financial advantage to be gained from undertaking such an exercise, and

(v) it can be evidenced that the contract is providing good value for money.

3.3 In the case of Supporting People contracts it will be appropriate to renew an existing contract without tendering where the strategic relevance, quality and value for money provided by the service has been assessed under the Supporting People Service Review process, as a result of which a decision has been made by the Devon Supporting People Joint Commissioning Body that the service should be re-commissioned with the current provider.

- 3.4 Where the criteria in 3.2 or 3.3 above cannot be demonstrated the provision of the service must be put out to tender.

4.0 Contracts Approval Process

- 4.1 Where contracts are let as a result of a tendering process approval will be in accordance with the Minimum Standards for Tenders and Contracts. These state that where the lowest bid is accepted this may be approved by the Heads of Service; but where the preferred tender is not the lowest this must be referred to the relevant Service Cabinet Member for approval.
- 4.2 Where new contracts are awarded or existing contracts are renewed without tendering the Head of Service will approve all contracts with a value in excess of £100,000 per annum, except in the case of Supporting People contracts. Approval of all other contracts is delegated as set out in the Social Services Scheme of Delegation. The Service Cabinet Member will be kept informed of all contracts approved.
- 4.3 In the case of Supporting People contracts the Head of Service will approve all contracts with a total value in excess of £750,000. Approval of all other contracts is delegated as set out in the Social Services Scheme of Delegation. The Service Cabinet Member will be kept informed of all contracts approved.