

Cumbria Police Authority

**Governance Committee
14 September 2010
Agenda Item No. 10b**

REVIEW OF CONTRACT STANDING ORDERS

A Report by the Chief Executive and the Treasurer

1. Introduction

1.1 The Contract Standing Orders as remodelled in 2007 based on a CIPFA best practice model, remain essentially sound, reflect current best practice and are fit for purpose. However, following consultation with the Chief Constable, a small number of amendments have been made to better reflect circumstances in which procurement is undertaken within Cumbria Police Authority and more particularly within the Constabulary. These changes are showing as 'tracked changes' within the body of the Contract Standing Orders and are commented on as follows:

- 1.1.1 Paragraph under Section 1- Policy Framework bullet point has been amended to reflect the importance of compliance with the EU Procurement Directives to avoid legal challenge and potentially damaging consequences for breaches.
- 1.1.2 Point 2.1.3 - Procurement Handbook is the "CIPFA Standing Guide to Commissioning Local Authority Work and Services".
- 1.1.3 Point 2.1.3 - Note about the EU Remedies Directive amended to reflect that the Directive has now been enacted. Website link provided for comprehensive guidance on the new legislation.
- 1.1.4 Point 3.3 amended to reflect where the Contract Signature Request Form template can be accessed.
- 1.1.5 Point 7.2.4 – Requirement to advertise for selection to Approved Lists throughout all member states of the EU deleted to avoid confusion with the EU Procurement Directives.
- 1.1.6 Point 7.3.1 – Statement regarding the keeping of a schedule of relevant and applicable framework agreements deleted as this is not practicable. There are too many framework agreements in existence, the details of which change on a regular basis, to keep an up-to-date list.

- 1.1.7 Point 7.3.2 - The word “normally” has been added to the statement about how framework agreements should last four years, as there are some exceptions to the rule.
- 1.1.8 Point 8.1.1 - Typing error amended.
- 1.1.9 Point 11.2 (f) – Details of sealed tender bids deleted as the Constabulary now uses electronic tendering.
- 1.1.10 Point 15.5 - Amended to reflect changes in Constabulary governance structures.
- 1.1.11 Points 15.7 – Amended to reflect changes in enhanced notification requirements under new standstill rules for EU Procurement procedures.

2. North West Forces Collaboration

2.1 Members are reminded there has previously been some discussion on whether there may be a need to more closely harmonise the Financial Regulations and Contract Standing Orders of individual police authorities across the North West Region. If further discussion supports a call for such an approach, this will be reported to Governance Committee along with an analysis of any proposals and their impact for Cumbria.

3. Recommendations

3.1 Members are asked to consider this report and the proposed amendments to the Contract Standing Orders. Subject to being satisfied on any matters raised, members are asked to recommend:

- (i) that the Authority be recommended to approve the adoption of the revisions detailed in this report and in the Contract Standing Orders to take effect from 01 October 2010.

Stuart Edwards
Acting Chief Executive
07 September 2010

Douglas Thomas
Treasurer



Standing Orders relating to Contracts

Reviewed by Governance Committee
and recommended to and approved by Police Authority .
to become effective from



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SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES

1. BASIC PRINCIPLES

THE ROLE OF THE POLICE AUTHORITY

Cumbria Police Authority is a freestanding public local authority in its own right, a separate legal body from the Cumbria Constabulary (which does not enjoy that legal status). The Police Authority, as a *corporation sole*, was set up by section 6 of the Police Act 1996 to “*secure the maintenance of an efficient and effective police force*” across its geographical area. In addition to its primary oversight role, a Police Authority does have other duties specified by law, which include holding the Chief Constable to account for the performance of his duties; having regard to strategic priorities set and their policing plan, and securing best value. It must also secure arrangements for the cooperation of its own with other police forces, where that would be efficient or effective. However, it is the first distinction above which makes the Police Authority the appropriate body for the purpose of entering into any legally binding contracts for the police service in Cumbria, whether for goods or services.

In terms of financial management the Authority stands responsible for approving the Constabulary’s policy framework, agreeing its budget requirement and setting the local precept, then approving the overall allocation of resources proposed by the Chief Constable; monitoring financial outcomes and performance; and giving approval to medium and longer-term financial plans. It is therefore responsible for approving the overall framework of delegation, accountability and control in which the Constabulary operates, including procurement and for monitoring compliance with these requirements.

POLICY FRAMEWORK

The Police Authority is responsible for agreeing the policy framework adopted by the Constabulary and the budget it delegates to its Chief Constable, which includes:

- 3 year policing strategy
- Annual policing plan
- Annual revenue budget
- Capital Programme
- Medium Term Financial Plans
- Treasury Management strategy
- Borrowing limits and prudential indicators
- Annual (Capital) Investment strategy
- Scheme of Delegation
- Standing Orders in relation to Contracts
- Financial Regulations



- Information communications and technology (ICT) strategy
- Risk Management strategy
- Anti-fraud and anti-corruption policy
- Whistle Blowing Policy
- Systems of internal control, including an annual Statement on Internal Control
- System of Internal Audit and annual review of its effectiveness

Section 10(1) of the Police Act 1996 provides that a police force – both officers and police staff – shall be under the direction and control of its Chief Constable. Section 88 of the Act makes him vicariously liable under law for the actions of police officers. The effect of section 15 is that police staff, its civilian employees, are in law the employees of the Police Authority. This means that those police staff working in the Constabulary under the Chief Constable's direction are staff for whom the Police Authority still retains some liability and responsibility in law.

Since a Police Authority has ultimate responsibility for all funds spent by their Constabulary and Chief Constables only enjoy very limited powers of independent contracting, there is no distinction in law between the financial responsibilities of the Police Authority and any financial responsibility incurred at the Constabulary. All contracting and procurement is therefore carried out in the name of the Police Authority. Even if in most cases their day-to-day negotiation and execution is effected by police officers and police staff working under the independent direction and control of the Chief Constable (per section 10 Police Act 1996), the Police Authority as part of its oversight duty will retain legal rights and interests over contracting, procurement and litigation carried out in its name or matters touching on its own functions. Any delegation of those legal rights and interests to the Chief Constable will only occur in so far as it is specifically identified under the Authority's Scheme of Delegation. If it is not so identified then a specific delegation does not exist and the matter will require specific authorization either by the Authority or through its own officers to the extent that they are authorized.

Since the Police Authority has ultimate responsibility for all funds spent by the Constabulary, there is no distinction in law between the financial responsibilities of the Police Authority and any financial responsibility devolved to the Constabulary. All contracting and procurement is therefore carried out in the name of the Police Authority, even if their actual negotiation and execution is effected by police officers and police staff who are at all times working under the independent direction and control of the Chief Constable, per section 10 Police Act 1996.

The Authority maintains a Scheme of Delegation which records those duties or functions which it has delegated to the Chief Constable, including powers of contracting for goods or services or the disposal of property and assets.

Section 1 Local Government (Contracts) Act 1997 provides that Local Authorities may enter into contracts for the provision or making available of assets or services, for the purposes of, or in connection with, the discharge of their function by the Local Authority. It follows that, under statute, Police Authorities have administrative powers themselves to enter into commercial relationships both for and separately from the Constabulary, including their own budgetary purposes.



These Standing Orders in relation to Contracts therefore stand and must be applied in these very specific contexts. It follows that all purchasing and disposal procedures must:

- achieve *Value for Money* for public money spent
- be consistent with the highest standards of integrity
- ensure fairness in allocating public contracts
- comply with all legal requirements, [particularly in relation to the EU Public Procurement Rules](#)
- ensure that *Non-commercial Considerations* do not influence any *Contracting Decision*
- support the corporate aims and policies of both the Police Authority and the Constabulary
- comply with the Constabulary's corporate *Procurement Strategy*.

2. OFFICER RESPONSIBILITIES

2.1 Officers

2.1.1 All *Officers* responsible for purchasing or disposal must comply with these contract procedure rules. *Financial Regulations*, the Code of Conduct and with all UK and European Union binding legal requirements. Those *Officers* must ensure that any *Agents*, *Consultants* and contractual partners acting on their behalf also comply.

2.1.2 There are numerous references in these Contract Standing Orders to '*officers*'. For the purpose of these regulations the term '*officer*', other than named references to specific posts, shall be applied alike to Police Officers and Police Staff (who are under the direction and control of the Chief Constable) and to those of the Police Authority (who are not).

2.1.3 *Officers* must:

- have regard to the guidance in the *Procurement Handbook** [\(CIPFA Standing Guide to Commissioning Local Authority Work and Services\)](#)
- check whether a suitable *Corporate Contract* exists before seeking to let another contract. Where a suitable *Corporate Contract* exists, this must be used unless there is an auditable reason not to
- keep the records required by Rule 6
- take all necessary legal, financial and professional advice,, particularly relating to EU [public procurement rules](#)*.

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*Note: The new EU Remedies Directive [became effective](#) in the UK [on the 20th](#) December 2009. Any public sector and utilities contracts awarded in breach of certain fundamental EU public procurement rules can be declared "ineffective" by the Courts. Depending on the circumstances of the breach, the Courts may order the setting aside of the decision concerned; order the contracting authority to amend any document; make an award of damages to an economic operator, and order the contracting authority to pay a fine.

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[Further guidance on the implementation of the Remedies Directive can be obtained on the Office of Government Commerce website at: www.ogc.gov.uk/procurement_policy_and_application_of_eu_rules_guidance_on_the_UK_regulations.asp](http://www.ogc.gov.uk/procurement_policy_and_application_of_eu_rules_guidance_on_the_UK_regulations.asp)

2.1.4 When an employee of the Authority or staff under the control of the Chief Constable or of a service provider may be affected by any transfer arrangement, *Officers* must ensure that the Transfer of Undertaking (Protection of Employment) (TUPE) issues are considered and obtain legal advice before proceeding with inviting Tenders or Quotations.

2.2 Responsibilities of the Chief Executive and Chief Constable

2.2.1 The Chief Executive and Chief Constable must each:

- ensure that their respective staff comply with Rule 2.1
- keep registers of:
 - contracts under seal and completed by signature and arrange their safekeeping
 - exemptions recorded under Rule 3.2.

3. EXEMPTIONS, COLLABORATIVE AND E-PROCUREMENT ARRANGEMENTS:

3.1 Every contract made by or on behalf of the Police Authority relating to purchases or sales shall comply with the following provisions of these standing orders. No exceptions from the following provisions shall be made; other than by direction of the Police Authority or the Chief Constable, which shall be reported to the next meeting of the Authority's Governance Committee and always subject to the provisions of European Procurement Directives.

3.2 Where an exemption is necessary because of:

- an unforeseeable emergency involving immediate risk to persons, property or serious disruption to Constabulary (or Authority) services,
- there is only one possible supplier
- in the case of the supply of goods or works of a specialised nature
- situations where seeking competition would be a risk to security, e.g. covert equipment/ services

the *Chief Constable (or Chief Executive for the Authority)* may approve the exemption.

3.3 All exemptions and the reasons for them must be recorded using the Contract Signature Request Form (see the [Procurement Sharepoint site](#)) with an accompanying business case. Exemptions shall be signed by the Chief Constable and reported to the next meeting of the Authority's Governance Committee to support the action taken.

Deleted: Procurement Handbook

3.4 The Procurement Unit must be consulted and an exemption approved by the *Director of Finance and Resources* prior to commencing any



procurement process using Office of Government Commerce (OGC) Buying Solutions Contracts. The terms and conditions of contract applicable to any OGC arrangement, including the requirement to undertake competition between providers, must be fully complied with.

- 3.5 The Director of Finance and Resources shall monitor the use of all exemptions.
- 3.6 In order to secure *Value for Money* or fulfill recently enhanced collaboration duties, the Authority and Constabulary may enter into collaborative procurement arrangements. For the Constabulary, any planned collaborative procurement will require the Director of Finance and Resources and the *Director of Legal Services* to be consulted, where the purchase is to be made using collaborative procurement arrangements with another Police Authority, government department, statutory undertaker or public service purchasing consortium. Further, if it is a major procurement exercise, then the Police Authority must be notified in advance. Similarly for the Authority and subject to any approval requirements which may arise as a result of sections 6 and 23 of the Police Act 1996 (as amended), any planned procurement collaboration shall require the Chief Executive and Treasurer to be consulted as a minimum if not the full Authority which shall be determined by the Chief Executive.
- 3.7 All purchases made via a Local Authority purchasing and distribution consortium are deemed to comply with these contract procedure rules and no exemption is required. However, purchases above the *EU Threshold* must be let under the *EU Procedure*, unless the consortium has satisfied this requirement already by letting their contract in accordance with the *EU Procedures* on behalf of the Authority and other consortium members.
- 3.8 Any contracts entered into through collaboration with other Police Authorities or other public bodies, where a competitive process has been followed that complies with the contract procedure rules of the leading organisation, will be deemed to comply with these contract procedure rules and no exemption is required. However, advice must be sought from the Procurement Unit.
- 3.9 The use of e-procurement technology does not negate the requirement to comply with all elements of these contract procurement rules, particularly those relating to competition and Value for Money.

4. RELEVANT CONTRACTS

- 4.1.1 All *Relevant Contracts* must comply with these contract procedure rules. A *Relevant Contract* is any arrangement made by, or on behalf of, the Authority for the carrying out of works or for the supply of goods, materials or services. These include arrangements for:
 - the supply or disposal of goods
 - the hire, rental or lease of goods or equipment
 - the execution of works
 - the delivery of services, including (but not limited to) those related to:
 - the recruitment of specialist staff
 - land and property transactions



- financial and consultancy services.

4.2 *Relevant Contracts* do not include:

- Contracts of employment which make an individual a direct employee of the Authority, or
- Instruction of counsel and external legal advisors

SECTION 2: COMMON REQUIREMENTS

5. STEPS PRIOR TO PURCHASE

5.1 The relevant *Officer* must appraise the purchase, in a manner commensurate with its complexity and value and taking into account any guidance in the *Procurement Handbook*, by

- appraising the need for the expenditure and its priority
- defining the objectives of the purchase
- assessing the risks associated with the purchase and how to manage them
- considering what procurement method is most likely to achieve the purchasing objectives, including internal or external sourcing, partnering, packaging strategy and collaborative procurement arrangements with another Police Authority, Government Department, Statutory Undertaker or Public Service Purchasing Consortium
- consulting users as appropriate about the proposed procurement method, contract standards and performance and user satisfaction monitoring
- drafting the terms and conditions that are to apply to the proposed contract
- setting out these matters in writing if the *Total Value* of the purchase **exceeds £35,000**

5.2 and by confirming that:-

- there is delegated approval for the expenditure and the purchase accords with the approved policy framework and scheme of delegation

6. RECORDS

6.1 Where the *Total Value* is **less than £10,000** it is advisable to keep basic records. As a minimum, records must be maintained of any quotations received and the award made.



6.2 Where the *Total Value* is **between £10,000 and £35,000**, the following records must be kept:-

- Invitation to quote and *Quotations*
- A record
 - of any exemptions and the reason for them
 - of the reason if the lowest price is not accepted.
- Written records of communications with the successful contractor or an electronic record if a written record of the transaction would normally not be produced.

6.3 Where the *Total Value* **exceeds £35,000** the relevant officer must record:-

- The method for obtaining bids (see Rule 8.1)
- Any *Contracting Decisions* and the reasons for it in the form of a formal tender evaluation report
- Any exemptions under Rule 3 together with the reasons for it
- The *Award Criteria* in descending order of importance
- Tender documents sent to and received from *Candidates*
- Pre-tender market research
- Clarification and post-tender negotiations (to include minutes of meetings)
- The contract documents
- Post-contract evaluation and monitoring
- Communications with *Candidates* and with the successful contractor throughout the period of the contract.

6.4 Records required by this rule must be kept for six years and four months after the end of the contract. Where a contract is made under seal, the records must be kept for twelve years and four months. However, written documents which relate to unsuccessful *Candidates* may be microfilmed or electronically scanned or stored by some other suitable method after 12 months from award of contract, provided there is no dispute about the award.

7. ADVERTISING, APPROVED LISTS AND FRAMEWORK AGREEMENTS

7.1 Identifying and Assessing Potential Candidates

7.1.1 Relevant officers shall ensure that, where proposed contracts, irrespective of their *Total Value* might be of interest to potential *Candidates* located in other member states of the EU, a sufficiently accessible advertisement is



published. Generally, the greater the interest of the contract to potential bidders from other member states, the wider the coverage of the advertisement should be. Examples of where such advertisements may be placed include:

- The Constabulary's and Authority's websites
- Portal websites specifically created for contract advertisements
- National official journals, or
- The Official Journal of the European Union (OJEU)/ Tenders Electronic Daily (TED) (even if there is no requirement within the *EU Procedure*).

7.1.2 Relevant officers are responsible for ensuring that all *Candidates for a Relevant Contract* are suitably assessed. For contracts above £35,000, where a formal tender shall take place, the assessment process shall establish that the potential *Candidates* have sound:

- Economic and financial standing
- Technical ability and capacity to fulfill the requirements of the Authority

Where a Candidate Contractor is a subsidiary within a group, the soundness of the group should be considered together with the appropriateness of obtaining a bond or a 'guarantee' from the parental company (see Section 17)

7.1.3 This shall be achieved in respect of proposed contracts that are expected to exceed £75,000 by selecting firms from:

- *Approved Lists* of providers, maintained by the Cumbria Police Authority or on its behalf, and compiled following responses to a public advertisement, or
- Shortlists assessed from expressions of interest in a particular contract submitted in response to a public advertisement.

7.1.4 Public advertisements issued in respect of Rule 7.1.3 above shall reflect the potential degree of interest from *Candidates* located within other member states of the EU.

7.2 Approved Lists

7.2.1 *Approved Lists* should be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise. *Approved Lists* cannot be used where the *EU Procedure* applies.

7.2.2 *The Chief Constable* in consultation with the Procurement Unit may draw up:

- *Approved Lists* of persons ready to perform contracts to supply goods or services or particular types including without limitation on the basis of agreed contract terms



- Criteria for *Shortlisting* from the lists.

7.2.3 No person may be entered on an *Approved List* until there has been an adequate investigation into both their financial and their technical ability to perform the contract, unless such matters will be investigated each time bids are invited from that list.

7.2.4 *Approved Lists* must be drawn up after an advertisement inviting applications for inclusion on the list. The advertisement must be placed to secure the widest publicity among relevant suppliers. Persons may be entered on a list between the initial advertisement and re-advertisement provided the requirements of Rule 7.2.3 are met.

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7.2.5 The list and *Shortlisting* criteria must be reviewed at least annually and re-advertised at least every three years. On re-advertisement, a copy of the advertisement must be sent to each person on the list, inviting them to reapply. Review means:

- The reassessment of the financial and technical ability and performance of those persons on the list, unless such matters will be investigated each time bids are invited from that list.
- The deletion of those persons no longer qualified, with a written record kept justifying the deletion.

7.2.6 All *Approved Lists* shall be maintained in an open, fair and transparent manner and be open to public inspection.

7.2.7 A register of pre-qualified contractors and *Consultants* maintained by or on behalf of central government (eg Constructionline) will be deemed to be an *Approved List* for the purpose of these contract procedure rules and shall not be subject to the requirements of Rules 7.2.2 to 7.2.6 inclusive.

7.3 Framework Agreements

7.3.1 Advice and approval to utilize other Framework Agreements must be sought from the [Head of Procurement](#).

Deleted: A schedule of relevant and applicable Framework Agreements for the purpose of these Standing Orders shall be maintained in the Procurement Management Handbook.

7.3.2 The terms of a *Framework Agreement* must not normally exceed four years and, while an agreement may be entered into with one provider, where an agreement is concluded with several organisations, there must be at least three in number.

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7.3.3 Contracts based on *Framework Agreements* may be awarded by either:

- Applying the terms laid down in the *Framework Agreement*(where such terms are sufficiently precise to cover the particular call-off) without re-opening competition, or
- Where the terms laid down in the *Framework Agreement* are not precise enough or complete for the particular call-off, by holding a mini competition in accordance with the following procedure:
 - inviting the organisations within the *Framework Agreement* that are capable of executing the subject of the contract to submit written *Tenders*



- fixing a time limit which is sufficiently long to allow Tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract
- awarding each contract to the tenderer who has submitted the best *Tender* on the basis of the *Award Criteria* set out in the specifications of the *Framework Agreement*



SECTION 3: CONDUCTING PURCHASE AND DISPOSAL

8. COMPETITION REQUIREMENTS FOR PURCHASE, DISPOSAL AND PARTNERSHIP ARRANGEMENTS

The relevant *Officer* must calculate the estimated *Total Value* of the proposed procurement or disposal. The following procedures apply where there are no other procedures which take precedence. Other procedures may include agency agreements with government or framework agreements. If in doubt, relevant officers must seek the advice of the Procurement Manager.

8.1 Purchasing – Competition Requirements

8.1.1 Where the *Total Value* for a purchase is within the values in the first column below, the *Award Procedure* in the second column must be followed. *Shortlisting* shall be done by the persons specified in the third column.

Total Value	Award Procedure	Shortlisting
Up to £5,000	On oral <i>Quotation</i> (confirmed in writing where the Total Value exceeds £500)	Officer
£5,000 - £9,999	At least one written <i>Quotation</i>	Two Officers (usually Officer and Line Manager)
£10,000 - £34,999	At least three written competitive <i>Quotations</i>	Two Officers (usually Officer and Line Manager)
£35,000 – EU Threshold See Annex A	<i>Invitation to Tender</i> by advertisement / list to at least three and no more than six <i>Candidates</i>	Officer, Line Manager, in conjunction with the Director of Legal Services or the Head of Procurement
Above EU Threshold See Annex A	EU Procedure or, where this does not apply, <i>Invitation to Tender</i> by advertisement / list to at least four and no more than six <i>Candidates</i>	Officer, Line Manager, in conjunction with the Director of Legal Services or the Head of Procurement
In respect of any contracts to be let by the Authority directly, references above to the Director of Legal Services shall be to the Chief Executive, who may instruct the Director of Legal Services to act on the Authority's behalf.		

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8.1.2 Where it can be demonstrated that there are insufficient suitably qualified *Candidates* to meet the Competition requirement, all suitably qualified *Candidates* must be invited.

8.1.3 A relevant *officer* must not enter into separate contracts nor select a method of calculating the *Total Value* in order to minimize the application of these contract procedure rules.

8.1.4 Where the *EU- Procedure* is required, the relevant *officer* shall consult the Head of Procurement to determine the method of conducting the purchase.



8.2 Assets for Disposal

- 8.2.1** Assets for disposal must be sent to public auction except where better *Value for Money* is likely to be obtained by inviting *Quotations* and *Tenders* or other approved method. (These may be invited by advertising on the Constabulary's or Authority's internet site.) In the latter event, the method of disposal of surplus or obsolete stocks / stores or assets other than land must be formally agreed between the Director of Finance and Resources and the Authority's Treasurer in accordance with the Authority's Scheme of Delegation and the limits identified there. The basis upon which obsolete stocks / stores are declared surplus to requirements shall be in accordance with the Authority's Financial Regulations.
- 8.2.2** Where an asset is disposed of for less than the highest offer, the Chief Constable or Chief Executive as appropriate shall prepare a report for the next meeting of the Authority's Governance Committee, setting out why the highest offer has not been accepted (as per Financial Regulations).

8.3 Providing Services to External Purchasers

- 8.3.1** The *Chief Constable* must be consulted where contracts to work for organisations other than the Authority are contemplated.

8.4 Collaborative and Partnership Arrangements.

- 8.4.1** Collaborative and partnership arrangements are subject to all UK and EU procurement legislation and case law. They must follow these contract procedure rules. In the case of private finance initiatives (PFI) and other public/private sector partnerships, such contracts must be approved and authorised by the Police Authority. (See Authority's Scheme of Delegation). If in doubt, relevant *Officers* must first seek the advice of the Director of Legal Services and the Head of Procurement..

8.5 The Appointment of Consultants to Provide Services

- 8.5.1** Consultant architects, engineers, surveyors and other professional *Consultants* shall be selected and commissions awarded in accordance with the procedures detailed within these contract procedure rules and as outlined below: -

Total Value	Award Procedure	Shortlisting
Up to £30,000	One oral <i>Quotation</i> (confirmed in writing where the <i>Total Value</i> exceeds £2,000)	Officer
£30,001 - £100,000	Three written <i>Quotations</i>	Two Officers (usually Officer and Line Manager)
£100,001 – EU threshold See Annex A	<i>Invitation to Tender</i> by advertisement / list to at least three and no more than six <i>Candidates</i>	Officer, Line Manager in conjunction with Director of Legal Services or Head of Procurement
Above EU threshold See Annex A	<i>EU Procedure</i> or, where this does not apply, <i>Invitation to Tender</i> by advertisement / list to at least four and no more than six <i>Candidates</i>	Officer, Line Manager in conjunction with Director of Legal Services or Head of Procurement
In respect of any contracts to be let by the authority directly, references above to the Director of Legal Services shall be to the Chief Executive, who may instruct the Director of Legal Services to act on the Authority's behalf.		



- 8.5.2** The engagement of a *Consultant* shall follow the agreement of a brief that adequately describes the scope of the services to be provided and shall be subject to completion of a formal letter or contract of appointment.
- 8.5.3** Records of consultancy appointments shall be maintained in accordance with Rule 6.
- 8.5.4** *Consultants* shall be required to provide evidence of, and maintain professional indemnity insurance policies to the satisfaction of the *Chief Constable (or the Chief Executive in the case of direct consultancy to the Police Authority)* for the periods specified in the respective agreement.

9. PRE-TENDER MARKET RESEARCH AND CONSULTATION

- 9.1 The relevant *Officer* responsible for the purchase:
- may consult potential suppliers prior to the issue of the *Invitation to Tender* in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any potential *Candidate*, but
 - must not seek or accept technical advice on the preparation of an *Invitation to Tender* or *Quotation* from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential *Candidates* or distort competition, and
 - should seek advice from the *Procurement Unit*.

10. STANDARDS AND AWARD CRITERIA

- 10.1 The relevant *Officer* must ascertain what are the relevant British, European or international standards, which apply to the subject matter of the contract. The *Officer* must include those standards which are necessary properly to describe the required quality. The Director of *Legal Services* must be consulted if it is proposed to use standards other than European standards.
- 10.2 The relevant *Officer* must define *Award Criteria* that are appropriate to the purchase and designed to secure an outcome giving *Value for Money* for the Authority. The basic criteria shall be:
- 'lowest price' where payment is to be made by the Authority
 - 'higher price' if payment is to be received, or
 - 'most economically advantageous', where considerations other than price also apply

If the last criterion is adopted, it must be further defined by reference to sub-criteria which may refer only to relevant considerations. These may include price, service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, quality, relevant environmental considerations, aesthetic and functional characteristics (including security and control features), safety, after-sales services, technical assistance and any other relevant matters. Where it is intended to adopt this criterion in letting a contract, prior notice shall be given to



applicants and the weightings of the criteria to be applied in evaluating submissions.

10.3 *Award Criteria* must not include:

- *Non-commercial Considerations*
- Matters which discriminate against suppliers from the *European Economic Area* or signatories to the *Government Procurement Agreement*.

11. INVITATIONS TO TENDER / QUOTATIONS

11.1 The *Invitation to Tender* shall state that no *Tender* will be considered unless it is received by the date and time stipulated in the *Invitation to Tender*. No *Tender* delivered in contravention of this clause shall be considered, subject to Rule 13.8.

11.2 All *Invitations to Tender* shall include the following:

- a) A specification that describes the Authority's requirements in sufficient detail to enable the submission of competitive offers.
- b) A requirement for tenderers to declare that the *Tender* content, price or any other figure or particulars concerning the *Tender* have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose).
- c) A requirement for tenderers to complete fully and sign all *Tender* documents including a form of *Tender* and certificates relating to canvassing and non-collusion
- d) Notification that *Tenders* are submitted to the Authority on the basis that they are compiled at the tenderer's expense.
- e) A description of the *Award Procedure* and, unless defined in a prior advertisement, a definition of the *Award Criteria* in objective terms and if possible in descending order of importance.
- f) Notification that no *Tender* will be considered unless it is in accordance with the "Instructions to Tender"
- g) A stipulation that any *Tenders* submitted by fax or other electronic means shall not be considered, unless in accordance with section 13.3.
- h) The method by which any arithmetical errors discovered in the submitted *Tenders* is to be dealt with. In particular, whether the overall price prevails over the rates in the *Tender* or vice versa.

Deleted: enclosed in a sealed envelope or container which bears the word '*Tender*' followed by the subject to which it relates, but no other name or mark indicating the sender.

11.3 All *Invitations to Tender* or *Quotations* must specify the goods, service or works that are required, together with the terms and conditions of contract that will apply (see Rule 16).

11.4 The *Invitation to Tender* or *Quotation* must state that the Authority is not bound to accept any *Quotation* or *Tender*.



- 11.5 All *Candidates* invited to *Tender* or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

12. SHORTLISTING

- 12.1 Any *Shortlisting* must have regard to the financial and technical standards relevant to the contract and the *Award Criteria*. Special rules apply in respect of the *EU Procedure*
- 12.2 The relevant officers responsible for *Shortlisting* are specified in Rule 8.1.1.
- 12.3 Where *Approved Lists* are used, *Shortlisting* may be done by the relevant officer in accordance with the *Shortlisting* criteria drawn up when the *Approved List* was compiled (see Rule 7.2.2). However, where the *EU Procedure* applies, *Approved Lists* may not be used.

13. SUBMISSION, RECEIPT AND OPENING OF TENDERS / QUOTATIONS

- 13.1 *Candidates* must be given an adequate period in which to prepare and submit a proper *Quotation* or *Tender*, consistent with the complexity of the contract requirement. Normally at least four weeks should be allowed for submission of *Tenders*. The *EU Procedure* lays down specific time periods (see guidance in the *Procurement Handbook*).
- 13.2 All *Tenders* must be returned to the Director of Legal Services.
- 13.3 *Tenders* received by fax or other electronic means (e.g. email) must be rejected, unless they have been sought in accordance with an electronic tendering system approved by the Director of Finance and Resources and Director of Legal Services.
- 13.4 The relevant *officer* must not disclose the names of *Candidates* to any staff involved in the receipt, custody or opening of tenders.
- 13.5 The Director of Legal Services shall be responsible for the safekeeping of *Tenders* until the appointed time of opening. Each *Tender* must be:-
- suitably recorded so as to subsequently verify the date and precise time it was received
 - adequately protected immediately on receipt to guard against amendment of its contents
 - recorded immediately on receipt in the *Tender Record Log*.
- 13.6 The Director of Legal Services must ensure that all *Tenders* are opened at the same time when the period for their submission has ended. The relevant *Officer* or his or her representative must be present. *Tenders* must be opened in the presence of Director of Legal Services (or their nominee) plus another officer. Where the *Total Value* is more than the *EU Threshold*, one must be the Director of Finance and Resources or his nominee.



- 13.7 Upon opening, a summary of the main terms of each *Tender* (ie significant issues that are unique to each *Tender* submission and were not stated in the *Tender* invitation documents such as *Tender* sum, construction period, etc) must be recorded in the *Tender Record Book*. The summary must be initialed by those referred to at paragraph 13.6.
- 13.8 Any tender received after the time appointed for the receipt of tenders for a particular contract shall be treated as a 'late tender'. The date and time of receipt of all late tenders shall be recorded on the cover of any such tender and signed by the receiving officer. A late tender shall only be opened if:-
- (i) The other tenders have not already been opened and
 - (ii) There is evidence that the tenderer has made appropriate arrangements for the delivery of the tender before the closing date and time eg by posting first class mail.

Such tenders will be marked as 'Technically late' and may be opened. If a technically late tender is found to be favourable it may be accepted but its lateness must be recorded and reported to the Chief Constable for approval.

14. CLARIFICATION PROCEDURES AND POST-TENDER NEGOTIATION

- 14.1 Providing clarification of an *Invitation to Tender* to potential or actual *Candidates* or seeking clarification of a *Tender*, whether in writing or by way of a meeting, is permitted. However, discussions with tenderers after submission of a *Tender* and before the award of a contract with a view to obtaining adjustments in price, delivery or content (ie post-tender negotiations) must be the exception rather than the rule. In particular, they must not be conducted in an *EU Procedure* where this might distort competition, especially with regard to price.
- 14.2 If post-tender negotiations are necessary after a single-stage *Tender* or after the second stage of a two-stage *Tender*, then such negotiations shall only be undertaken with the tenderer who is identified as having submitted the best *Tender* and after all unsuccessful *Candidates* have been informed. During negotiations tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the *Tender* documents. Relevant *Officers* appointed by the *Chief Constable* (or *Chief Executive for prescribed Police Authority contracts*) to carry out post-tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.
- 14.3 Post-tender negotiation must only be conducted in accordance with the guidance issued by the Director of Finance and Resources who, together with the Head of Procurement, must be consulted wherever it is proposed to enter into post-tender negotiation. Negotiations must be conducted by a team of at least two *Officers*, one of whom must be from a department independent to that leading the negotiations.
- 14.4 Where post-tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered.



15. EVALUATION, AWARD OF CONTRACT, AND DEBRIEFING CANDIDATES

- 15.1 No contract for the execution of works or for the supply of goods or services shall be made unless budgetary provision has been made in annual revenue or capital estimates approved by the Authority or unless an estimate is reported to and approved by the Authority. For contracts over £35,000 resulting from a formal tendering procedure or a framework agreement, or any exemptions from standing orders, a 'contract signature request form' must be completed by the relevant officer and certified by the relevant Commander or Director to enable the Director of Finance and Resources (or the Head of Financial Services) to confirm that budgetary provision exists to meet the likely costs and to enable the Director of Legal Services to sign the contract, or the Authority to seal the contract. The Chief Executive and Treasurer shall act likewise in respect of any contracts to be let by the Authority directly.
- 15.2 Apart from the debriefing required or permitted by these contract procedure rules, the confidentiality of *Quotations*, *Tenders* and the identity of *Candidates* must be preserved at all times and information about one *Candidate's* response must not be given to another *Candidate*.
- 15.3 Contracts must be evaluated and awarded in accordance with the *Award Criteria*. During this process, *relevant Officers* shall ensure that submitted *Tender* prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.
- 15.4 The arithmetic in compliant *Tenders* must be checked. If arithmetical errors are found they should be notified to the tenderer, who should be requested to confirm or withdraw their *Tender*. Alternatively, if the rates in the *Tender*, rather than the overall price, were stated within the *Tender* invitation as being dominant, an amended *Tender* price may be requested to accord with the rates given by the tenderer.
- 15.5 *Relevant Officers* may accept *Quotations* and *Tenders* received in respect of proposed contracts, provided they have been sought and evaluated fully in accordance with these contract procedure rules and, in respect of proposed contracts that are expected to exceed **£200,000**, the approval of the relevant Commander or Director has been secured. The awarding of contracts that are expected to exceed **£500,000** shall also be approved by the [Chief Officer Group](#). For contracts which are expected to exceed £1m, contracts shall be approved by the Police Authority.
- 15.6 Where provision has been made within the annual budget or formally approved capital programme, a tender may be accepted if it is within the estimate or is **no more than 10% more** than the estimate. Where a tender exceeds the estimated amount by more than **the lower of £10,000 or 10%**, the Chief Constable shall be advised accordingly (and the Chief Executive for prescribed Police Authority tenders).
- 15.7 Where the *Total Value* is **over £35,000** the relevant *Officer* must notify all *Candidates* simultaneously and as soon as possible of the intention to award the contract to the successful *Candidate*.

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For all contracts subject to EU Procurement Regulations, the relevant *Officer* must [contact the Director of Legal Services to ensure compliance with enhanced notice requirements under new standstill rules. Failure to comply with the new procedures can trigger serious penalties contained in the new Remedies Directive.](#)



There is now a requirement to issue an "award decision notice" to all unsuccessful *Candidates*. This has to be done as soon as possible after making the decision and by the most rapid means possible. The notice must contain:

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- the award criteria (including sub-criteria and weightings used)
- the score of the recipient and the winning bidder
- reasons for the decision, including the characteristics and relative advantages of the successful bid
- if the bid was not held to be compliant with any technical specification, the reasons for that decision
- the name of the winner
- a precise statement of when the standstill period starts and ends, including how it may be affected by any "contingencies" e.g. complaints or challenges
- the date after which the contract may be entered into.

If the decision is challenged by an unsuccessful *Candidate* then the *Officer* shall not award the contract and shall immediately seek the advice of the Director of Legal Services.

Deleted: with a period of at least ten days in which to challenge the decision before the *Officer* awards the contract.

15.8 For all contracts where the total value exceeds £35,000, a formal tender evaluation report shall be prepared for the attention of the Director of Legal Services.

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<#>The *Officer* shall debrief in writing all those *Candidates* who submitted a bid about the characteristics and relative advantages of the leading bidder. No information, other than the following, should be given without taking the advice of the Director of Legal Services:¶
¶
<#>how the *Award Criteria* were applied¶
¶
<#>the prices or range of prices submitted, in either case not correlated to *Candidates'* names¶
¶
<#>the names of *Candidates* where there were three or more *Candidates*.¶

Deleted: <#>If a *Candidate* requests in writing the reasons for a *Contracting Decision*, the *relevant Officer* must give the reasons in writing within 15 days of the request. If requested, the *relevant Officer* may also give the debriefing information at Rule 15.7 above to *Candidates* who were deselected in a pre-tender *Shortlisting* process.¶
¶

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SECTION 4: CONTRACT AND OTHER FORMALITIES

16. CONTRACT DOCUMENTS

16.1 Relevant Contracts

16.1.1 All *Relevant Contracts* that **exceed £35,000** shall be in writing

16.1.2 All *Relevant Contracts*, irrespective of value, shall clearly specify:-

- What is to be supplied (ie the works, materials, services, matters or things to be furnished, had or done)
- the provisions for payment (ie the price to be paid and when)
- the time, or times, within which the contract is to be performed
- the provision for the Authority to terminate the contract

16.1.3 The Authority's order form or standard terms and conditions issued by a relevant professional body must be used wherever possible.

16.1.4 In addition, every *Relevant Contract* of purchase **over £35,000** must also state clearly, subject to contractors own standard terms and conditions:-

- that the contractor may not assign or sub-contract without prior written consent
- any insurance requirements
- health and safety requirements
- data protection requirements, if relevant
- that charter standards are to be met if relevant
- race relations requirements
- gender equality requirements
- Disability Discrimination Act requirements
- Freedom of Information Act requirements
- where *Agents* are used to let contracts, that *Agents* must comply with the Authority's contract procedure rules
- a right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant.

16.1.5 The formal advice of the Director of Legal Services (or the Chief Executive in the case of a contract to be let by an Authority Officer) must be sought for the following contracts:



- where the *Total Value* **exceeds £35,000**
- those involving leasing arrangements
- where it is proposed to use a supplier's own terms
- those involving the purchase of application software with a *Total Value* of more than £35,000
- those that are complex in any other way

16.2 Contract Formalities

16.2.1 Agreement shall be completed as follows:

Total Value	Method of Completion	By
Up to £35,000	Signature	Line Manager (see Rule 16.2.3)
£35,000 to £150,000	Signature	Director of Legal Services (or Chief Executive as appropriate) see Rule 16.2.3 (following completion of a Contract Signature Request Form)
Above £150,000	Sealing	Chief Executive (following completion of a Contract Signature Request Form)

16.2.2 All contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the *Director of Legal Services*. An award letter is insufficient.

16.2.3 The relevant *Officer* responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it.

16.3 Sealing

16.3.1 Where contracts are completed by each side adding their formal seal, such contracts shall be signed by a representative of the Authority, together with the fixing of the Cumbria Police Authority's seal, and must be witnessed by a further officer.

16.3.2 Every Authority sealing will be consecutively numbered, recorded and signed by the person witnessing the seal. The seal must not be affixed without the authority of the *Chief Executive* acting under delegated powers.

16.3.3 A contract must be sealed where:

- the Authority may wish to enforce the contract more than six years after its end
- the price paid or received under the contract is a nominal price and does not reflect the value of the goods or services



- there is any doubt about the authority of the person signing for the other contracting party,
- or the *Total Value* **exceeds £150,000**
- **or is a 'Contract Variation' which has the effect of increasing the value of a contract which has already been subject to sealing** (see 16.4.2 below)

16.3.4 A register of sealed contracts shall be maintained by the Authority.

16.4 Contract Variations

16.4.1 Formal approval of the Director of Legal Services and the Director of Finance and Resources (or the Chief Executive in the case of a contract to be let by an Authority Officer) must be sought whenever a contract variation is required. A written Change Control Notification must be issued for any contract variation, which must be signed and agreed by both parties, and a copy of the signed document retained by Legal Services.

16.4.2 Any Contract Variation which has the effect of increasing the value of a contract which has been subject to sealing shall itself be submitted to the Chief Executive for sealing.

17. BOND AND PARENT COMPANY GUARANTEES

17.1 The relevant *Officer* must consult the Director of Finance and Resources (or Treasurer in the case of a contract to be let by an Authority Officer) about whether a *Parent Company Guarantee* is necessary when a *Candidate* is a subsidiary of the parent company and:

- the *Total Value* **exceeds £250,000**, or
- award is based on evaluation of the parent company, or
- there is some concern about the stability of the *Candidate*.

17.2 The relevant *Officer* must consult the Director of Finance and Resources (or Treasurer in the case of a contract to be let by an Authority Officer) about whether a Bond is needed:

- where the *Total Value* **exceeds £1,000,000**.
- or where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the *Candidate*.

18. PREVENTION OF CORRUPTION

18.1 The relevant *Officer* must comply with the Authority and Constabulary's joint *Anti Fraud* and *Anti Corruption policy* and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the relevant *Officer* to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour will



lead to dismissal and is a crime under the statutes referred to in Rule 18.2 below.

- 18.2 The following clause must wherever possible be put in every written Authority contract: -

“The Authority may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor’s behalf do any of the following things:

- (a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Authority contract (even if the Contractor does not know what has been done), or*
- (b) commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972, or*
- (c) commit any fraud in connection with this or any other Authority contract whether alone or in conjunction with Cumbria Police Authority members, contractors or employees.*

Any clause limiting the Contractor’s ability shall not apply to this clause.”

- 18.3 Written contracts shall also refer to and highlight whistle blowing arrangements as set out in the Anti Fraud and Corruption policy documents.

19. DECLARATION OF INTERESTS

- 19.1 If it comes to the knowledge of a member, an employee of the Authority or anyone under the direct control of the Chief Constable that a contract in which he or she has a pecuniary interest has been or is proposed to be entered into by the Authority, he or she shall immediately give written notice to the chief executive. The chief executive shall report such declarations to the *Governance Committee*.
- 19.2 Such written notice is required irrespective of whether the pecuniary interest is direct or indirect. An indirect pecuniary interest is distinct from a direct pecuniary interest in as much as it is not a contract to which the member or employee is directly a party.
- 19.3 A shareholding in a body not exceeding a total nominal value of **£25,000** or **1%** of the nominal value of the issued share capital (whichever is the less) is not a pecuniary interest for the purposes of this standing order.
- 19.4 The Chief Constable and Chief Executive as monitoring officer shall each maintain a separate record of all declarations of interests notified to them by members and relevant Officers.
- 19.5 The Chief Executive as monitoring officer shall ensure that the attention of all members is drawn to the National Code of Local Government Conduct.



ANNEX A

EU Procurement Thresholds

Thresholds applicable from 1 January 2010 until further notice are given below. Thresholds are net of VAT.

**PUBLIC CONTRACTS REGULATIONS 2006 – THRESHOLDS FROM
01 JANUARY 2010**

	SUPPLIES	SERVICES	WORKS
Contract Notices	£156,442	£156,442	£3,927,260
	€193,000	€193,000	€4,845,000