

Contract Procedure Rules

1. CONTRACT PROCEDURE RULES

- (1) These Contract Procedure Rules are a framework of rules, which must be adhered to when purchasing goods, services or works. These Contract Procedure Rules have been established to ensure that the Council is compliant with UK legislation, follows best practise and achieves best value for money in its procurement activities. These Contract Procedure Rules do not apply to employment contracts or contracts for sale or purchase of land.
- (2) These Contract Procedure Rules promote good purchasing practice and public accountability. Officers responsible for purchasing goods, services or works are bound by these Contract Procedure Rules which lay down minimum requirements. A more thorough procedure may be appropriate for a particular contract.
- (3) Officers must ensure that any necessary pre-purchasing steps have been taken. This may include conducting a best value review, drafting a business case, undertaking some market research and considering any workforce implications.
- (4) Exemptions from the following provisions of these Contract Procedure Rules are provided for in Section 7.
- (5) These Contract Procedure Rules should be used in conjunction with Financial Regulations as appropriate. The Procedure Rules will be reviewed and updated on a periodic basis.
- (6) Officers must also ensure that any agents or consultants acting on their behalf in purchasing matters also comply with these Contract Procedure Rules and Financial Regulations, and with all UK and EU binding legal requirements.
- (7) Contracts means any arrangement under which the Council pays or receives money or equivalent value for:
 - (a) goods;
 - (b) services;
 - (c) works
 - (d) hire, rental or lease agreements.
- (8) In all instances where a works contract has, or is estimated to have, a value in excess of £500,000, the conditions of the Capital Projects Protocol shall be complied with.
- (9) Where reference is made to Heads of Service within these Procedure Rules this shall include the Chief Officers.
- (10) No decision shall be taken by a Portfolio Holder under the Procedure Rules except on the advice of the Head of Service concerned.
- (11) The Procedure Rules shall be the Standing Orders of the Council.
- (12) The provisions of Procedure Rules 8, 9 and 10 shall not apply to tenders by competitive dialogue or to negotiated tenders.

2. ESTIMATES

Before entering into a contract for the execution of any work an estimate in writing of the probable expense of executing the work in a suitable manner shall be obtained. An officer must neither enter into separate contract nor select a method of calculating the *Estimated Total Value* in order to circumvent the application of the Contract Procedure Rules or the EU Procurement Regulations.

3. PROCUREMENT BEST PRACTICE GUIDE

A Procurement Best Practice Guide is on the Council's Intranet under *Procurement* which complements the Council's Procurement Strategy and should be referred to in conjunction with these Procedure Rules.

4. RESTRICTED TENDERING

- (1) This Procedure Rule shall apply where the Head of Service concerned, Council, Cabinet, appropriate Cabinet portfolio holder, or a Committee duly authorised in that behalf have decided that invitations to tender for a contract of £25,000 or more are to be made to some or all of those persons or bodies who have replied to a public notice.
- (2) For the purposes of this Procedure Rule, public notice shall be given:-
 - (a) in at least one newspaper, journal or relevant electronic advertising media circulating among such persons or bodies who undertake such contracts and on the Council's website: and
 - (b) at the discretion of the Head of Service concerned, to all or a selected number of persons or bodies named in the list maintained under Procedure Rule 5.
- (3) The public notice shall:-
 - (a) specify details of the contract into which the Council wish to enter;
 - (b) invite persons or bodies interested, to express an interest (usually by means of the completion of a pre-qualification questionnaire); and
 - (c) specify a time limit, being not less than 10 days, within which such expressions of interest are to be sent to the Council.
- (4) After the expiry of the period specified in the public notice, invitations to tender for the contract shall be sent to:-
 - (a) not less than four out of the persons or bodies who expressed an interest, and who have been shortlisted by the Head of Service concerned, Council, Cabinet or appropriate Cabinet portfolio holder; and
 - (b) where fewer than four persons or bodies have applied or are considered suitable, those persons or bodies which the Head of Service concerned, Council, Cabinet or appropriate Cabinet portfolio holder consider suitable.

5. APPROVED LISTS

- (1) This Procedure Rule shall apply where invitations to tender for a contract are to be limited to those persons or bodies whose names shall be included in a list compiled and maintained for that purpose.
- (2) An approved list shall:-
 - (a) be compiled and maintained by the Head of Service concerned;
 - (b) contain the names of all persons or bodies who wish to be included and who are approved; and
 - (c) indicate in respect of a person or body whose name is so included, the categories of contract and the values or amounts in respect of those categories for which approval has been given.
- (3) At least four weeks before a list is first compiled, notices inviting applications for inclusion in it shall be published in at least one newspaper, journal or relevant electronic advertising media circulating among such persons or bodies as undertake such contracts and on the Council's website.
- (4) The lists shall be reviewed at regular intervals of not less than two or more than three years. At least four weeks before each review each person or body whose name appears on the list shall be asked whether he wishes his name to remain thereon and notices inviting applications for inclusion on the list shall be published in the manner provided by sub-paragraph (3) of this Procedure Rule.
- (5) Invitations to tender for a contract shall be sent to:-
 - (a) not less than four of those persons or bodies on the approved list for the relevant category and amount or value; or
 - (b) where fewer than four persons or bodies are approved for a contract of the relevant category and amount or value, all those persons or bodies.

6. TENDERS BY OPEN COMPETITION

- (1) This Procedure Rule shall apply where the Head of Service concerned, Council, Cabinet or appropriate Cabinet portfolio holder or a committee duly authorised in that behalf have decided that tenders for a contract are to be obtained by open competition.
- (2) At least fourteen days' public notice shall be given in one or more newspapers, journals or relevant electronic advertising media circulating among such persons or bodies as undertake such contracts and on the Council's website. The notice shall express the nature and purpose of the contract, state where further details may be obtained, invite tenders for its execution and state the last date and time when tenders will be received.
- (3) Invitations to tender for a contract shall be sent to all those persons or bodies who expressed an interest and all responses shall be evaluated.

7. EXCEPTIONS TO TENDERING PROCEDURES

The provisions of Procedure Rules 4, 5 and 6 shall not apply to:-

- (a) contracts under £25,000, as to which the Head of Service concerned has discretion on how best to proceed;
- (b) contracts valued at £25,000 but under £50,000 as to which the Internal Audit Manager must be notified where a Head of Service intends to appoint a contractor without seeking competitive quotes for goods and services
- (c) contracts valued at £50,000 but under £100,000, as to which the Head of Service concerned, subject to the approval of the Deputy Chief Executive (Finance and Legal) or the Chief Executive Officer has discretion on how best to proceed;
- (d) contracts valued at £100,000 but under the threshold at which the EU Procurement Rules apply where Cabinet or Council considers it desirable in the best interests of the Council that a tender be invited from a contractor selected by it or be negotiated with a contractor already engaged by the Council (in the case of a works contract over £500,000 the Protocol for Capital Projects shall be followed);
- (e) a contract which is an extension (on the same or more favourable terms and conditions to the Council) of an initial contract awarded competitively following the operation of the procedures laid down in Procedure Rules 4, 5 and 6;
- (f) the operation of the procedures laid down in Procedure Rules 4, 5 and 6 (subject to the threshold at which the EU Procurement Rules apply);
- (g) a contract for which the appropriate Head of Service agrees it is appropriate to let contracts or purchase goods via a Council approved Consortium or any other public body buying Consortium.

The provisions of Procedure Rules 8, 9 and 10 shall not apply to tenders using the competitive dialogue procedure or to negotiated tenders.

8. RECEIPT AND CUSTODY

- (1) **Subject to (3) below** every invitation to tender shall state that no tender will be received unless it is **submitted via the Council's secure electronic tendering portal. Such electronic tendering portal shall be the portal determined by the Deputy Chief Executive (Commercial and Development) from time to time.**
- (2) **Tenders submitted via the Council's secure electronic tendering portal shall be uploaded to a secure 'lock box' within the electronic tendering portal which shall remain locked until after the time and date specified in the invitation to tender as the closing time and date for tenders.**
- (3) **Notwithstanding (1) above in exceptional circumstances, where it is considered that e-tendering is not suitable for the procurement, the invitation to tender may state that tenders will be received** enclosed in a plain sealed envelope which shall bear the word "Tender" - followed by the subject to which it relates but no other name or mark indicating the sender.
- (4) Such sealed tender **referred to in (3) above** shall be addressed impersonally to the Head of Service concerned where the estimated value of the tender does not exceed £50,000, and, where above £50,000, shall be addressed impersonally to the Solicitor to the Council. Tenders shall remain in the custody of the Head of Service or Solicitor to the Council or designated officer until the time of opening. – *see Tender Opening Procedure document on the Council's Intranet.*

- (5) No tender received after the time and date specified in the invitation shall be accepted or considered unless
- (a) **in the case of tenders being submitted in accordance with (3) and (4) above** there is clear evidence of it having been posted by first class post at least the day before tenders were due to be returned; or
 - (b) **in the case of tenders submitted electronically in accordance with (1) and (2) above, where the Solicitor to the Council in his sole discretion considers that there are exceptional circumstances.**

9. **OPENING**

Tenders shall be opened at one time and only in the presence of:-

- (a) Not less than two Members of the Council, where the estimated value of the proposed contract exceeds £250,000.
- OR
- (b) Not less than two designated officers, one from the relevant department and one from a different department, where the estimated value of the proposed contract does not exceed £250,000.

10. **RECORDING OF TENDERS**

- (1) The List of Tenderers shall be completed and signed by Members and officers at the time of opening. This list should detail the name of each contract, name of invited tenderers and value submitted.
- (2) The List of Tenderers should be kept by the appropriate Head of Service and a copy supplied to the Solicitor to the Council.

11. **ALTERATIONS**

Where examination of tenders reveals errors or discrepancies which would affect the tender figure(s) in an otherwise successful tender, the tenderer is to be given details of such errors and discrepancies and afforded an opportunity to agree and amend the error and/or confirm the original price.

12. **ACCEPTANCE**

The appropriate Head of Service is authorised to accept a tender but shall only do so after consultation with the appropriate Cabinet portfolio holder or Committee Chair where:-

- (1) The tender is not more than 10% of the estimate tabled at the time of tender opening or,
- (2) The tender to be accepted is not the lowest tender if payment is to be made by the Council or the highest tender, if payment is to be received by the Council.
- (3) Once a tender has been accepted and a contract entered into the appropriate Head of Service shall notify the Deputy Chief Executive (Finance and Legal) to enable him/her to check/arrange appropriate insurance.

The Audit Committee will be notified, by the appropriate Head of Service of contracts over £250,000 with details of tenderers and amounts, indicating which tender has been accepted and, if other than the lowest (or highest as the case may be) reasons for that decision, which shall be minuted.

13. AUTHORISATION

- (1) Every contract which exceeds £250,000 in value or amount shall be under seal and be signed by at least the Chief Executive or the Solicitor to the Council or other authorised officer.
- (2) Every contract which exceeds £50,000 in value or amount but is no more than £250,000 in value or amount shall be signed by at least two officers who are Heads of Service or Chief Officers.
- (3) The Council may require a contractor to give sufficient security for the due performance of any contract.

14. CORRUPT PRACTICES

There shall be inserted in every written contract a clause empowering the Council to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if the contractor shall have offered or given or agreed to give to any person, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do, any action in relation to the obtaining or execution of the contract or any other contract with the Council, or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council, or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the contractor), or if in relation to any contract with the Council, the contractor or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

15. CONDITIONS OF CONTRACT

- (1) Every contract which exceeds £10,000 in value or amount, except a contract required in extreme emergency, shall specify in writing:-
 - (a) the goods, materials or services to be supplied and the work to be executed;
 - (b) the price to be paid with a statement as to the amount of any discounts or other deductions;
 - (c) the period(s) within which the contract is to be performed; and
 - (d) such other conditions and terms as may be agreed between the parties.:
- (2) Clauses shall be inserted in every written contract for the execution of work or the provision of services, where appropriate:
 - (a) requiring the contractor to comply with the Council's Equal Opportunity Employment Policy and Equality Policy;

- (b) requiring the contractor to provide a Health and Safety Policy (having regard to the Council's Health and Safety Policy);
- (c) requiring the contractor to consider initiatives to ensure the Council's commitment to environmental sustainability;
- (d) providing for dispute resolution and escalation;
- (e) requiring compliance with the Data Protection Act 1998 or any legislation relative to Data Protection;
- (f) requiring acknowledgement of the Council's duties under and assistance with compliance by the Council of its duties under the Freedom of Information Act 2000;
- (g) containing provisions regarding the application of TUPE and adherence to the Best Value Code of Practice on Workforce Matters (applies only to contracts in force as of 23 March 2011 or earlier).