

# Contracts Procedure Rules

## 1. Legislative compliance

- 1.1. Every procurement contract made by the Council, the Cabinet or Officer acting for the Council, shall comply with any relevant Directives of the European Community in force in the United Kingdom, and with UK Statutes and Statutory Instruments.
- 1.2. In the event of a conflict arising between European Directives, UK Statutes and Statutory Instruments, and the remainder of these Rules, the Directive, Statute or Statutory Instrument will prevail.
- 1.3. Within the framework of these requirements the Council has adopted the recommendations of the Egan Report and where appropriate will apply a partnering approach to its procurement arrangements, and seek to conclude arrangements which accord with the principles of Best Value.

## 2. Compliance with Contract Procedure Rules

- 2.1. The Contract Procedure Rules do not apply to contracts of employment (see Employment Procedure Rules).
- 2.2. The Contract Procedure Rules do not apply to the acquisition or disposal of land.
- 2.3. No exception from any of the provisions in these Contract Procedure Rules shall be made unless directed by the Council or the Cabinet or permitted under powers delegated by either.
- 2.4. Every exception made shall be reported to the Council or Cabinet and the report shall detail the special circumstances by which the exceptions are justified.
- 2.5. Where, in advance of an invitation to tender or a contract award, the Cabinet has agreed some or all of the terms of a contract ("the Agreed Terms") no material amendment to the Agreed Terms shall be made unless the amendment has been approved by the relevant Chief Officer in consultation with the appropriate Cabinet Member. A subsequent report shall be submitted to the Cabinet.

### **3. Prerequisite for entering a contract**

- 3.1. Before entering into any contract a Chief Officer shall be satisfied that budgetary provision exists for any expenditure to be incurred.
- 3.2. Before entering any contract where the value is likely to exceed the relevant valuation threshold under the European regulatory regime for 'works', 'supplies' or 'services', an advertisement will be placed in the Official Journal of the European Communities.

### **4. Procurement Procedure**

- 4.1. The procurement of works, supplies or services valued at more than £50,000 (excluding VAT) must be made in accordance with Rules 5 to 16 below.
- 4.2. The procurement of works, supplies or services valued at less than £50,000 (excluding VAT), if not made in accordance with Rules 5 to 16 below, must be made by Official Order in accordance with Rules 17 and 18 below.
- 4.3 In calculating the value in 4.1 and 4.2 above, the estimated value of any linked transactions (contract prices only) is to be aggregated.

### **5. Exceptions to procurement procedure**

- 5.1. The procurement of works, supplies and services valued at greater than £50,000, but less than any applicable thresholds under European regulation (excluding VAT), may be made by Official Order in accordance with Rules 17 and 18 in the following exceptional circumstances:
  - 5.1.1. Where the supply of works, supplies or services can only be provided by one supplier and there would be no genuine competition. This action must be reported to the Cabinet.
  - 5.1.2. Where the supply of works, supplies or services constitutes extension of an existing contract and the extension has been approved by the Cabinet.
  - 5.1.3. Where the supply of works, supplies or services is required so urgently as not to permit the invitation of tenders. This action must be reported to the next meeting of the Cabinet.
  - 5.1.4. Where tenders for the supply of works, supplies or services have already been invited by a consortium, of which the Council is a member, in accordance with the procurement procedures of that consortium (for example, the Wirral and North Wales

Purchasing Organisation).

- 5.1.5. Where in the opinion of the Cabinet it is considered in the Council's interest so to do (e.g. partnering arrangements). The justification for such a decision shall be reported to the Council for information.
- 5.2. If the Cabinet considers that it would be in the Council's best interest, a single tender may be invited for the supply of works, supplies or services from a contractor selected by it, or negotiated with a contractor already engaged by the Council. The justification for such action shall be reported to the Council.

## **6. Obtaining expressions of interest**

- 6.1. Before entering into any contract, unless procurement is to be by way of the Standing List procedure in Rule 9 below, a Chief Officer shall invite potential contractors to express their interest in tendering for the supply of works, supplies or services by:
  - 6.1.1. Where the extent of the works, supplies or services being tendered are valued at more than the threshold sum determined by the European Community, an advertisement in the Official Journal of the European Communities in accordance with the "Open" or "Restricted" Procurement process, whichever that Chief Officer decides is appropriate; or
  - 6.1.2. Otherwise, advertisement in one or more of the local newspapers circulating in the Borough and in at least one newspaper or trade journal circulating among such potential contractors as considered suitable by that Chief Officer, giving at least four weeks for contractors to express an interest. The responsible Chief Officer may invite expressions of interest either by the above methods or by any other means that he/she considers to be equally effective or appropriate.
- 6.2. All advertisements shall state the criteria by which contractors will be selected. Such criteria will include an assessment of a contractor's technical capability and financial standing.
- 6.3. Where a Chief Officer proposes to use the "Negotiated" procedure, this shall be reported to Cabinet for approval.

## **7. Assessment of technical ability and financial standing**

- 7.1 On receipt of expressions of interest in tendering for a contract, and prior to dispatching invitations to tender, the relevant Chief Officer shall make appropriate enquiries as to the contractor's technical capability and shall as appropriate consult the Director of Finance as to the contractor's financial

standing.

- 7.2 No invitation to tender documentation shall be dispatched to a contractor who, under the “Restricted” Procurement arrangements of the European Community Regulations, does not meet the pre-qualification criteria, nor in other cases to a contractor who does not meet the financial, technical or other criteria set out in the advertisement seeking expressions of interest (including policies in relation to health and safety, risk management and equality of opportunity).
- 7.3 The relevant Chief Officer shall record the reasons for disqualifying any contractor on the basis of failing to meet financial, technical or other criteria set out in the advertisement seeking expressions of interest.

## **8. Invitation to tender**

- 8.1 If the “Restricted” Procurement arrangements under European Community Regulations are followed, the relevant Chief Officer shall, subject to Contract Procedures Rule 7 above, dispatch identical invitation to tender documentation to each contractor expressing an interest in tendering for the advertised contract.
- 8.2 In cases other than where the “Restricted” Procurement arrangements under European Community Regulations are followed, the relevant Chief Officer shall by reference to the selection criteria outlined in the advertisement for expressions of interest select no fewer than four potential contractors and shall dispatch identical invitation to tender documentation to each selected potential contractor.

## **9. Standing lists of contractors**

- 9.1 With the agreement of the Cabinet that a series of contracts of a similar nature are to be awarded, the relevant Chief Officer may invite expressions of interest from contractors to be entered onto a standing list of contractors for the supply of specified works, supplies and services.
- 9.2 In reaching its decision in 9.1 above, the Cabinet shall be satisfied that the standing list shall be subject to continuous review by the relevant Chief Officer.
- 9.3 Any contractor requesting inclusion on a standing list other than as a result of an advertisement under Contract Procedure Rule 6 shall, subject to the provisions of Contract Procedure Rule 7, (Assessment of technical ability & financial standing) be added to the standing list.
- 9.4 Any standing list of contractors shall be compiled and maintained by the responsible Chief Officer and indicate whether a contractor included on it is approved to tender for contracts for all or only some of the specified values or

amounts or categories of work. On completion of each contract the responsible Chief Officer shall review the performance of a contractor and their continuing entry on the standing list.

- 9.5 Any standing list of contractors shall be amended as required from time to time and reviewed following advertisement or as considered necessary by the relevant Chief Officer. The results of such a review shall be reported to the relevant select committee.

## **10. Receipt and opening of tenders**

- 10.1 No tender will be considered unless it is contained in a pre-printed tender envelope, or in a plain sealed envelope addressed to the Borough Solicitor and Secretary, marked "Tender for ....." (specifying the contract), and the closing date and time for receipt at the Council Offices. The invitation to tender shall state these requirements. Having received such envelopes the Borough Solicitor and Secretary shall maintain custody of them until the nominated time for opening them.

- 10.2 Tenders received within the time limit shall be opened at one time and only in the presence of two of the following:

10.2.1 the Borough Solicitor and Secretary or his/her nominated representative;

10.2.2 any member of the Council;

10.2.3 the responsible Chief Officer or his/her nominated representative;

10.2.4 the Director of Finance or his/her internal audit representative if he/she so requires.

- 10.3 The Borough Solicitor and Secretary or an officer nominated by him/her shall record the names of the persons who submitted tenders and the amounts of the tenders. A copy shall be supplied to the responsible Chief Officer who shall check the accuracy of the tenders and report the amounts, but not the names of the unsuccessful tenderers, to the person/body authorised to accept a tender. The original record shall be kept by the Borough Solicitor and Secretary.

## **11. Late, improper or alternative tenders**

- 11.1 Subject to Rule 11.2 below, no tender shall be considered or accepted if it is received after the time and date specified in the invitation to tender, or it is in contravention of the conditions in Rule 10.1 above.

- 11.2 Tenders received at the required location after the specified closing time/date, may, in certain circumstances, be considered at the discretion of the Borough Solicitor and Secretary in consultation with the Director of Finance and opened in accordance with the procedure set out in Rule 10 above. The Borough Solicitor and Secretary must be satisfied that any such

late tenders were secure, and, whilst in transit, out of the control or access of the tenderer.

- 11.3 Any unacceptable tenders shall be opened by the responsible Chief Officer only to ascertain the name of the tenderer to enable the documents to be returned. No details of the tenders shall be disclosed.
- 11.4 Responsible Chief Officers may permit contractors to submit a modified tender by way of an alternative tender. The alternative tender should not be considered unless a tender is also submitted based strictly on the Invitation to Tender documents without qualification.
- 11.5 Any tenderer who improperly canvasses officers or members with regard to the tender process may, at the discretion of the Borough Solicitor and Secretary, be disqualified.

12. **Errors in tenders**

12.1 Subject to Rule 13.5, no tender shall be amended after it has been received except to correct bona fide errors endorsed as such by the Director of Finance.

13. **Acceptance of tenders**

13.1 Subject to the thresholds set out in paragraph 13.2 below, the responsible Chief Officer is authorised to accept the lowest tender (or the highest if payment is to be received by the Council).

13.2 Subject to paragraph 13.6, the responsible Chief Officer to whom the power has been delegated may accept tenders and quotations below £500,000 provided that:

- (a) the appropriate provision in the budget has not been reserved for further consideration by the Council and the tender does not exceed that estimate provision by more than 10% and
- (b) in the case of tenders or quotations between £50,000 and £500,000 the acceptance is reported to the next meeting of the appropriate select committee.

13.3 If the responsible Chief Officer wishes to accept a tender other than the lowest (or highest), the matter shall be referred to the Cabinet for decision or, in cases of urgency, to the Leader and/or Deputy Leader of the Council unless:

- (a) the tender or quotation does not exceed £20,000 and
- (b) the Chief Officer considers that it would be in the best interests of the Council to accept it.

13.4 In cases where the tender recommended for acceptance is in excess of £500,000, the matter shall be reported to the Cabinet for decision.

13.5 Where the Cabinet resolves to accept a tender other than the lowest or highest, the reason for its decision shall be set out clearly in the minutes of that meeting.

13.6 Where it is proposed to accept a tender which exceeds the provision in the budget by more than 10% or where the Director of Finance reports that difficulties in financing the project would result from any excess, acceptance of the tender shall be reported to the Cabinet for approval.

13.7 Acceptance of a tender shall be subject to the completion of a formal contract and provision of the security as laid down in Contracts Procedure Rule 14.

- 13.8 Where the appropriate Chief Officer considers that post-tender negotiation with tenderers will be economically advantageous to the Council the following provisions shall apply:
- 13.8.1 All negotiations must be carried out by at least two officers from a list of officers, specifically nominated by the appropriate Chief Officer as suitable and approved by the Director of Finance and the Borough Solicitor and Secretary;
- 13.8.2 All negotiations must take place only with the two lowest tenderers and shall be in accordance with procedures approved by the Director of Finance;
- 13.8.3 A record in a form approved by the Director of Finance must be maintained showing details of all negotiations.

#### 14. **Contract Conditions**

- 14.1 The Borough Solicitor and Secretary or his/her nominated representative shall sign all contracts and agreements to be made by or with the Council above a value of £50,000. Contracts which exceed £100,000 in value shall be sealed with the Common Seal of the Council.
- 14.2 All contracts above £50,000 shall be in writing in a form approved by the Borough Solicitor and Secretary which shall incorporate such plans, drawings, specifications, conditions of contract and other documents as may be necessary, and such contract shall not be made on behalf of the Council in any other way.
- 14.3 Where appropriate contracts shall:
- 14.3.1 specify the goods or services to be supplied or the works to be done ;
- 14.3.2 specify the time or times within which the contract is to be performed;
- 14.3.3 specify the price to be paid with a statement of discount and other deduction;
- 14.3.4 specify, where the responsible Chief Officer considers it necessary, the liquidated and ascertained damages to be paid by the contractor if the contract is not completed at the specified date or any extended date in accordance with the contract, or the deduction to be made from payments where defined service levels are not achieved. The amount to be specified in each contract shall be determined in consultation with the Director of Finance;
- 14.3.5 in so far as it is permitted by other legislation, require the Contractor to observe the Race Relations Act 1976, the Race Relations (Amendment) Act 2000, the Health and Safety at Work, etc Act 1974 and the Disability Discrimination Act 1995 and subsequent replacement or amending



legislation;

- 14.3.6 require all workmanship, goods and services to be supplied in accordance with any appropriate standard, specification or code of practice issued by the British Standards Institution or any European Community standards in force at the date of the invitation to tender;
- 14.3.7 state that the contractor shall not assign the contract without the approval of the Council;
- 14.3.8 state that except where otherwise provided, the contractor will not sub-let any part of the works without obtaining the approval of the responsible Chief Officer. The contractor shall be responsible for the acts, defaults and neglects of any sub-contractor, his agents, tenants or workpeople as fully as if they were the acts, defaults or neglects of the contractor unless the contract provides otherwise;
- 14.3.9 require all tenderers to provide for a bond or sufficient security for the due performance of firstly any contract valued at £500,000 or more, and secondly any contract where the Director of Finance considers it appropriate. "Sufficient security" shall be at least 10% of the estimated value of the contract. The requirements for a bond may be waived with the consent of the Director of Finance. A tender providing for a bond may be accepted without a bond at the discretion of the Cabinet;
- 14.3.10 empower the Council to terminate the employment of the Contractor under the contract in question or any other contract, 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 obtaining or execution of this 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 in question or any other contract with the Council, or if like acts shall have been done by any person employed by the Contractor acting on behalf of the contractor (whether with or without the Contractor's knowledge), or if in relation to this or any other contract with the Council the contractor or any person employed by him or acting on his behalf shall have committed an 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 subsection (2) of section 117 of the Local Government Act 1972 or any amendment or re-enactment thereof;
- 14.3.11 require the contractor to hold public liability and other insurance cover as appropriate, proof of this to be supplied to the Council as required throughout the life of the contract.

**15. Variation orders and extra work orders**

- 15.1 The responsible Chief Officer shall record every Variation Order or Extra Works Order immediately it is raised. If the issue of Variation Order(s) would at the date of the Variation Order(s) increase the original contract price by more than £15,000 or 2%, whichever is the lower, it shall be reported to the Cabinet and to the appropriate select committee.
- 15.2 Where contracts are entered into on fluctuating basis, the £15,000 or 2% relates to the original tender sum as adjusted under the terms of the contract.
- 15.3 Where the contract price includes a sum for contingencies, the limits outlined in paragraph 15.1 above shall relate to the total contract price.

**16. Interim payments and final certificate**

- 16.1. Where contracts provide for payment to be made by instalments, the responsible Chief Officer concerned shall arrange for the keeping of a Contract Register or Registers to show the state of the account between the Council and the Contractor, together with any other payments and the related professional fees.
- 16.2. Payments to contractors on account of contracts shall be made only on a certificate signed by the responsible Chief Officer or other authorised officer of the appropriate department, or by a consultant who is responsible to the Council for the supervision of a contract on its behalf, showing the total value of the contract, the value of work executed to date, retention money, amount paid to date, and the amount now certified.
- 16.3. Subject to the provisions of the contract every variation order or extra works order shall be authorised in writing by the responsible Chief Officer. Where the issue of such variations or works order has the effect of increasing the original contract sum by more than 2% with a minimum reporting level of £15,000, then it shall be reported to the Cabinet.
- 16.4. The responsible Chief Officer shall not issue a certificate for the final payment due to the contractor under a contract until he/she is satisfied as to the accuracy of the detailed statement of account, showing how the amount of the final payment is calculated, and the completeness of supporting vouchers and documents that verify the statement. These shall be supplied to the Director of Finance who must have a reasonable time in which to examine the statement and to make any observations

thereon to the responsible Chief Officer that he/she thinks necessary.

- 16.5. The Director of Finance shall, to the extent he/she considers necessary, examine interim and final accounts for contracts and he/she shall be entitled to make all such enquiries and receive such information and explanation as he/she may require in order to satisfy himself/herself as to the accuracy of the accounts.

## **17. Orders for goods, works and services**

- 17.1. All Official Orders shall be recorded in an approved order book issued by the Director of Finance or held by electronic means approved by the Director of Finance. Official Orders shall state clearly the quantity and description of the goods or materials or services ordered. The contract price(s) shall be specified on the order issued to the supplier. Telephone or oral orders shall be confirmed by written order as soon as practicable. Copies of all orders should be retained and, in addition to the information contained on the copy sent to the supplier, should show the relevant expenditure code.
- 17.2. Official Orders shall be issued by the Chief Officer responsible for the budget to which the expenditure is to be charged, subject to any arrangements for central purchasing or other exceptions that the Council may approve. Orders shall be signed by the Chief Officer personally or by an officer in his/her department of sufficient seniority nominated by him/her and notified in writing to the Director of Finance.
- 17.3. Where such orders are required to be issued for a period in excess of a financial year a new official order shall be raised at 1 April each year.

## **18. Procurement valued at less than £50,000**

- 18.1. Procurement of work, goods or services the contract value of which do not exceed £50,000 shall be carried out in the following manner:-
- 18.2. Where the estimated value is less than £10,000, by verbal or written quotations provided a note of such quotations is made on the relevant copy orders;

- 18.3. Between £10,000 and £50,000, following consideration by the responsible Chief Officer of at least three written, faxed or e-mailed quotations

## **19. Engagement of consultants**

- 19.1. It shall be a condition of the engagement of consultants by the Council or a responsible Chief Officer that the provisions of these Contracts Procedure Rules are complied with in respect of any matter with which they are concerned unless the responsible Chief Officer or the Cabinet agrees otherwise under the provisions of Rule 2 above.

## **20. Direct Labour Organisations**

- 20.1 This Standing Order shall apply to Direct Labour Organisations as defined by the Local Government (Planning and Land) Act 1980 and the Local Government Act 1988.
- 20.2 Notwithstanding any other requirements of standing orders, officers controlling direct labour organisations shall be free, prior to submitting tenders for work to be done, to obtain competitive tenders direct from potential sub-contractors or suppliers, whether they be nominated or not, in such manner as is lawful and appropriate considering the current custom and practice of the trades or industries concerned.
- 20.3 When a direct labour organisation has been appointed as the contractor to the Council under the terms of these procedure rules, the officers controlling such organisation shall be free, during the continuance of such contract, to negotiate and agree, direct with sub-contractors or suppliers, reductions in prices of services or goods to be supplied under the contract, without there being any change in the specification.
- 20.4 When any tender from a direct labour organisation has been accepted by the Council, the officers controlling the direct labour organisation shall at the earliest possible moment present a full report to the Director of Finance of all negotiations carried out in exercise of the actions in 20.2 and 20.3.
- 20.5 Where particular circumstances approved by the appropriate Chief Officers justify such course, officers controlling direct labour organisations shall be free to negotiate and contract with contractors or persons not at that time on the Council's approved list of contractors. A full report of any such negotiations shall be submitted to the Director of Finance at the earliest possible moment, before or after entering into such contract.

## 21. **Procurement on behalf of the Merseyside Pension Fund**

- 21.1 Procurement of work, goods or services on behalf of the Merseyside Pension Fund shall comply with the provisions of these Contracts Procedure Rules.
- 21.2 Contracts the value of which are below £250,000 will be awarded by the Director of Finance. Contracts above this amount will be awarded by the Pensions Committee.

## 22. **Definitions**

In these Contracts Procedure Rules:

- 22.1 **Contract**” means an agreement constituting an offer to do or forbear from doing anything by one party and an acceptance of that offer by the other party, turning the offer into a promise. A party suing on a promise must show that he has given consideration for the promise unless the promise was given under seal. Contracts therefore are not restricted to capital expenditure, or large transactions. They are, in fact, more commonly entered into for small revenue items.
- 22.2 **“The Council”** shall be deemed to include reference to the Cabinet, or person acting in accordance with delegated authority on behalf of the Council.
- 22.3 **“The responsible Chief Officer”** shall mean the Chief Executive and/or a Chief Officer or person nominated by them, responsible to the Council for supervising the execution by the contractor of the work; or who issues an official order.
- 22.4 **“A Consultant”** means any person other than an employee being, for example, an architect, engineer, surveyor or other professional person, engaged by the Council under a contract for services, to provide professional advice to, and on behalf of, the Council.
- 22.5 **“Assign”** means the transfer to a third party of the Contractor’s interest in the contract.
- 22.6 **“Competitive Tendering”** means the obtaining of more than one tender.
- 22.7 **“Invitation to Tender”** means the sending of documents to a contractor asking him/her to make an offer to the Council.
- 22.8 **“Tender”** means an offer in writing made by a Contractor or Supplier to the Council to execute works, provide goods, materials or services on terms specified by the Council.

- 22.9 “**Sub-let**” means the allocation of the whole or part of the works to a third party. However, the Contractor retains the right of control over the performance of the Contract.
- 22.10 “**Serial Tender**” means a procedure for dealing with a series of tenders.
- 22.11 “**Goods**” includes materials, vehicles, plant and equipment.
- 22.12 “**Procurement**” means arrangements with a view to completing a contractual agreement for the supply of work, goods and services.
- 22.13 “**Quotation**” means a tender submitted in respect of works below £100,000.