

Contract Procedure Rules

1 General

1.1 Legislative Compliance

- 1.1.1 Every procurement contract made by the Council, the Cabinet, a regulatory committee (including the Pensions Committee on behalf of the Merseyside Pension Fund) 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.
- 1.1.2 In the event of a conflict arising between European Union Directives, UK Statutes and Statutory Instruments and the remainder of these Rules, the Directive, Statute or Statutory Instrument will prevail.
- 1.1.3 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.

1.2 Compliance with Contract Procedure Rules

- 1.2.1 Article 14.2 of the of the Council Constitution 'Contracts' states 'Every contract made by the Council will comply with the Contract Procedure Rules set out in Part 4 of this constitution', unless it conflicts with Statutory provisions.
- 1.2.2 The Contract Procedure Rules do not apply to:
- (i) Contracts of employment (see Employment Procedure Rules).
 - (ii) The acquisition or disposal of land.
- 1.2.3 No exception from any of the provisions in these Contract Procedure Rules shall be made unless directed by the Council, Cabinet or regulatory committee, or permitted under powers delegated by them.
- 1.2.4 Every exception made shall be reported to the Council, Cabinet or regulatory committee. This should detail the circumstances that justify the exception.

1.3 Procurement on Behalf of the Merseyside Pension Fund

- 1.3.1 Procurement of work, goods and services on behalf of the Merseyside Pension Fund shall comply with these Contract Procedure Rules.
- 1.3.2 Contracts valued at less than £500,000 will be awarded by the Director of Finance. Contracts above this amount will be awarded by the Pensions Committee.

2 Role of the Corporate Procurement Unit

- 2.1 The Corporate Procurement Unit (CPU) is the Authority's specialist section for procurement, and is comprised of procurement professionals. The unit is available to give expert advice on procurement matters and shall be consulted on all occasions where Authority employees are involved in the procurement process. On line procurement advice is available on the Procurement Services webpage on the Authority's intranet.

3 Prerequisite for Entering a Contract

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

4 Procurement Procedures and Thresholds

- 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 17 below.
- 4.2 The procurement of works, supplies or services valued at less than £50,000 (excluding VAT), if not carried out in accordance with Rules 5 to 17, must be made by Official Order in accordance with Rule 18 and 19 below.
- 4.3 In calculating the values in 4.1 and 4.2, contracts must not be divided to avoid the competitive procurement requirements as above.

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 Regulations, may be made by Official Order in accordance with Rules 18 and 19 in the following circumstances:
- 5.1.1 Where there is only one viable supplier and there would be no genuine competition. This action must be reported to Cabinet or the appropriate regulatory committee.
- 5.1.2 Where the supply is an extension of an existing contract. This must be approved by Cabinet or the appropriate regulatory committee and provide value for money for the Council.
- 5.1.3 Where the supply is required so urgently that it is not possible to invite tenders. This must be reported to the next Cabinet or appropriate regulatory committee.
- 5.1.4 Where tenders have already been invited by a Local Government consortium or other public body e.g. the Office of Government Commerce, in accordance with the procurement procedures of that organisation, being subject to the provisions of any European or UK procurement legislation.

5.2 Where in the opinion of the Cabinet or appropriate regulatory committee it is in the Council's interests to do so, a single tender may be invited from a contractor or supplier, or negotiated with a supplier already engaged by the Council. The justification for this must be reported to the Council.

6 Obtaining Expressions of Interest

6.1 With the exception of the Standing List procedure in Rule 10, before entering into any contract 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 supply is valued at more than the threshold sum determined by the European Community the appropriate advert shall be placed in the Official Journal of the European Union: or

6.1.2 By advertisement in one or more local newspaper and in at least one newspaper or trade journal as considered suitable by the Chief Officer, giving at least four weeks for contractors to reply.

6.1.3 By any other means that the Chief Officer deems equally effective or appropriate providing that 6.1.1 does not apply.

6.2 All advertisements shall state:

(i) the nature and purpose of the works, goods and services to be supplied;

(ii) the criteria by which contractors will be assessed. This will include their technical ability and financial standing.

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 ability and financial standing.

7.2 No invitation to tender documentation shall be sent to a contractor who does not meet any pre-qualification criteria either under restricted procurement arrangements of the European Community or as set out in the original advertisement.

7.3 The relevant Chief Officer shall record the reasons for disqualifying any contractor from tendering.

8 Invitation to Tender

8.1 If restricted procurement rules are followed the relevant Chief Officer shall dispatch identical tender documentation to each contractor who has expressed an interest in the contract.

8.2 In cases other than the above, the relevant Chief Officer shall select wherever no fewer than four potential contractors from the list and dispatch identical tender documentation to them.

- 8.3 A record should be made of those contractors who have been invited to tender. A copy shall be sent to the Head of Legal and Member Services.

9 Corporate Contracts

- 9.1 Corporate Contracts are to be used for the supply of goods and services. The responsibility for negotiating Corporate Contracts is vested in the Corporate Procurement Unit. Once negotiated the contract must be approved by the Cabinet. (See Definition in 20.6).
- 9.2 The award of a Corporate Contract is subject to the normal tendering procedures as detailed in CPR's 6, 7, 8 and 10. The contract will be retendered at appropriate intervals.
- 9.3 Where Corporate Contracts are in existence, they must be used by a Chief Officer wishing to purchase goods within the scope of the contract. Any requirement to purchase such goods from suppliers other than the Corporate Contract must be approved by the Director of Finance through the Corporate Procurement Unit. (See definition 20.6).

10 Standing Lists of Contractors

- 10.1 With the agreement of the Cabinet, Executive Board or appropriate regulatory committee 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 for the supply of specified works, supplies and services.
- 10.2 In reaching a decision in 10.1 above, Cabinet, Executive Board or appropriate regulatory committee shall be satisfied that the standing list shall be subject to continuous review by the relevant Chief Officer.
- 10.3 Any contractor, who requests inclusion on a standing list shall, subject to assessments of technical ability and financial standing, be added to the standing list.
- 10.4 Any standing list of contractors shall be compiled and maintained by the responsible Chief Officer. This list should give details as to which type and value of contracts a contractor is approved to tender for. On the completion of a contract the responsible Chief Officer shall review the performance of the contractor and their continuing entry on the standing list.
- 10.5 Any standing list of contractors shall be reviewed and amended as required from time to time, following advertisement or such arrangements that the Chief Officer considers appropriate. The results shall be reported to the relevant select committee.
- 10.6 For the purpose of construction related projects, only those contractors who are Constructionline registered and CHAS accredited are to be used when compiling a list of tenderers.
Constructionline is owned by the Department of Trade and Industry and is the UK's largest register of pre-qualified construction contractors.
CHAS is the Contractor's Health & Safety Assessment Scheme.

11 Receipt and Opening of Tenders

- 11.1 No tender will be considered unless it is returned in a pre-printed tender envelope, or in a plain sealed envelope addressed to the Head of Legal and Member Services, marked tender for.....” (specifying the contract), to the specified Council office by the closing date and time for receipt. These requirements shall be stated in the invitation to tender. On receipt the Head of Legal and Member Services shall keep the tenders in safe custody until the nominated time for opening them.
- 11.2 Tenders received within the time limit shall be opened at the same time and only in the presence of two of the following:
- (i) the Head of Legal and Member Services or his/her nominated representative;
 - (ii) any member of the Council;
 - (iii) the responsible Chief Officer or his/her nominated representative;
 - (iv) the Director of Finance or his/her internal audit representative if he/she so requires.
- 11.3 The Head of Legal and Member Services or his/her nominated representative shall record the names of the persons who submitted tenders and the amounts submitted. A copy of this list should be supplied to the responsible Chief Officer who shall check it for accuracy and report the amounts but not the names of unsuccessful tenderers, to the person/body authorised to accept the tender, if the contract is to be awarded by reference to price alone. The original record shall be kept by the Head of Legal and Member Services.

12 Late, Improper or Alternative Tenders

- 12.1 Subject to rule 12.2, no tender shall be considered or accepted if it is received after the specified closing date and time specified in the invitation to tender, or is in contradiction of Rule 11.1.
- 12.2 Tenders received at the specified location after the specified close, may be considered at the discretion of the Head of Legal and Member Services in consultation with the Director of Finance, and opened in accordance with the procedures in Rule 11. The Head of Legal and Member Services must be satisfied that any such tender was secure, and whilst in transit, out of control or access of the tenderer.
- 12.3 Any unacceptable tenders shall be opened by the responsible Chief Officer only to ascertain where the documents should be returned.
- 12.4 Responsible Chief Officers may permit contractors to submit a modified tender. This should not be considered unless a tender is also submitted based strictly on the invitation to tender documents.
- 12.5 Any tenderer who improperly canvasses members or employees of the Authority with regard to the tender process, may at the discretion of the Head of Legal and Member Services, be disqualified.

13 Errors in Tenders

- 13.1 Subject to rule 14.10, no tender shall be amended after it has been received except to correct bona fide errors. This shall be endorsed by the Director of Finance.

14 Acceptance of Tenders

- 14.1 The responsible Chief Officer is authorised to accept tenders on one of the two following bases:

- (i) Subject to the thresholds below, the lowest tender (or highest if the payment is to be received by the Authority): or
- (ii) The most economically advantageous tender should be accepted using as a basis an appropriate evaluation model. The evaluation model should be approved by the evaluation panel established under 14.3 (below) which should have regard to guidance issued by the CPU.

- 14.2 (i) The Chief Officer when determining the evaluation model shall decide upon the appropriate balance between quality and price, having due regard to the nature of the services and the complexity of each contract.
- (ii) The scoring methodology must be included within any invitation to tender, and set to achieve the optimum combination of whole life costs and benefits to meet the Council's requirements.

- 14.3 The responsible Chief Officer, after consultation with the CPU, shall decide whether the importance of a contract justifies the formation of an evaluation panel.

The composition of the panel will depend on the nature of the contract. Consideration should be given to the inclusion of the following:

- The Project Manager
- Operational Manager(s)
- Finance
- Human Resources
- Legal Services
- Procurement
- Specialist Consultant (where appropriate)

- 14.4 Subject to paragraph 14.6, the responsible Chief Officer, under delegated powers, may accept tenders and quotations below £500,000 provided that:

- (i) the appropriate provision in the budget has not been reserved for further consideration by the Council, and the tender does not exceed that provision by more than 10% and
- (ii) 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.

- 14.5 If the responsible Chief Officer wishes to accept a tender other than the lowest/most economically advantageous, the matter shall be referred to Cabinet for decision, or urgent cases to the Leader and /or Deputy Leader of the Council unless:
- (i) the tender or quotation does not exceed £20,000 and
 - (ii) the Chief Officer considers that it would be in the best interests of the Council to accept it.
- 14.6 In cases where the tender recommended for acceptance is in excess of £500,000 the matter shall be reported to the Cabinet, Executive Board or appropriate regulatory committee for decision.
- 14.7 Where the Cabinet, Executive Board or appropriate regulatory committee resolves to accept a tender other than the lowest, the reason for its decision shall be recorded in the minutes of that meeting.
- 14.8 Where it is proposed to accept a tender exceeding the budget provision 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 appropriate select committee and then to Cabinet, Executive Board or appropriate regulatory committee for approval.
- 14.9 Acceptance of the tender is subject to the completion of a formal contract.
- 14.10 Post tender negotiations shall be carried out where the Chief Officer considers that post tender negotiations with tenderers would be of advantage. The following provisions will apply:
- (i) all negotiations must be carried out by at least two officers from a list of those specially nominated by the Chief Officer as suitable. They must be approved by the Director of Finance and the Head of Legal and Member Services;
 - (ii) all negotiations must take place only with the two lowest tenderers. This shall be in accordance with procedures approved by the Director of Finance;
 - (iii) a suitable record should be maintained of the negotiations.

15 **Contract Conditions**

- 15.1 The Head of Legal and Member Services or a nominated representative shall sign all contracts and agreements made by or with the Council, with a value above £50,000. Contracts greater than £100,000 in value shall be sealed with the Common Seal of the Council.
- 15.2 All contracts greater than £50,000 shall be in writing in a form approved by the Head of Legal and Member Services. This shall incorporate such plans, drawings, specifications and other documents as may be necessary.

15.3 Where appropriate contracts shall specify:

- (i) the goods or services to be supplied or the works to be done;
- (ii) the time or times within which the contract is to be performed;
- (iii) the price to be paid with a statement of discount and other deduction;
- (iv) where the Chief Officer considers necessary the liquidated and ascertained damages to be paid by the contractor if the contract is not completed at the specified date, or the deduction in payments where defined service levels are not met. The amount payable shall be determined in consultation with the Director of Finance.
- (v) Compliance with other relevant legislation such as the Race Relations (Amendment) Act 2000, Health and Safety at Work legislation.
- (vi) Require all workmanship, goods and services to be supplied in accordance with any appropriate standard, specification or code of practice in force at the date of the invitation to tender;
- (vii) state that the contractor shall not assign the contract without the approval of the Council;
- (viii) state that except where otherwise provided, the contractor will not sub-let any part of the works without the approval of the responsible Chief Officer. The contractor shall be responsible for the acts, defaults and neglect of any sub-contractor, his agents, tenants or employees as fully as if they were his own acts, unless the contract provides otherwise;
- (ix) require all tenderers to provide for a bond or sufficient security for due performance of any contract valued at £500,000 or more, and also where the Director of Finance considers it appropriate. 'Sufficient security' shall be at least 10% of the value of the contract. These requirements may be waived with the consent of the Director of Finance;
- (x) empower the Council to terminate the employment of a contractor if the contractor has offered, given or agreed to give any person any gift or consideration as an inducement to obtain the contract where an offence under the Prevention of Corruption Acts 1889 to 1916 or any amendment to them has been committed or given any fee or reward the receipt of which is an offence under the Local Government Act 1972;
- (xi) require the contractor to hold appropriate public liability and other insurance. Proof of this is to be supplied to the Council throughout the life of the contract.

16 Variation Orders and Extra Work Orders

- 16.1 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 order cause the final contract price to exceed the original contract sum by more than £50,000 or 10%, whichever is the lower, the Chief Officer must immediately inform the Director of Finance. The issue of the variation must subsequently be reported to Cabinet, Executive Board or regulatory committee as appropriate for noting within the following three months. This rule applies to all contracts as defined in Contract Procedure Rule 4.1, including those based on an 'Agreed Maximum Price'. The report must adequately explain the reasons for the variation.
- 16.2 Where the contract sum fluctuates in accordance with an index linked to measure of inflation, the £50,000 or 10% relates to the original tender sum as adjusted under the terms of the contract.
- 16.3 Where the contract price includes a sum for contingencies, the limits in paragraph 16.1 shall relate to the total contract price inclusive of contingencies.

17 Interim Payments and Final Certificate

- 17.1 Where contracts provide for payment to be made by instalments, the responsible Chief Officer shall arrange for the keeping of a Contract Register to show the state of the account between the Council and the Contractor, together with any other payments and related fees.
- 17.2 Payments to contractors on account of contracts shall be made only on a certificate signed by the responsible Chief Officer or other authorised departmental officer, or by a consultant responsible to the authority for the supervision of the contract, showing the total value of the contract, the value of the work executed to date, retention money, amount paid to date, and the amount now certified.
- 17.3 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. This should show how the amount of the final payment is calculated, and the completeness of supporting vouchers and documents that verify the statement. The final statement shall be supplied to the Director of Finance for examination.
- 17.4 The Director of Finance shall, to the extent he/she considers necessary, examine interim and final accounts for contracts and shall be entitled to make such enquiries and receive information and explanations necessary to be satisfied as to the accuracy of the accounts.

18 Orders for Goods, Works and Services

- 18.1 All official orders shall be recorded in a manner approved by the Director of Finance. The order shall clearly state the quantity and description of the goods, materials or services ordered. The contract price or price quoted shall be specified on the order issued to the supplier. Telephone or verbal orders shall be confirmed by a written order as soon as practicable. Copies of all

orders shall be retained and, in addition to that sent to the supplier, should show the relevant expenditure code.

18.2 Official orders shall be issued by the Chief Officer responsible for the budget to which the expenditure is to be charged, subject to any Corporate Procurement Unit arrangements or other exceptions approved by the Council. Orders shall be authorised by the Chief Officer or by a nominated officer within the department.

18.3 Where orders are required for a period in excess of a financial year, a new official order shall be raised at 1st April each year.

19 Procurement Valued at Less Than £50,000

19.1 Procurement of goods, works and services where the contract value does not exceed £50,000 shall be carried out as follows:

- (i) where the estimated value is less than £10,000, by three verbal or written quotations, provided a note of such quotations is made on the relevant copy orders;
- (ii) between £10,000 and £50,000, following consideration by the responsible officer of three written, faxed or e-mailed quotations.

In both the above cases, the Department should be able to demonstrate that genuine attempts have been made to obtain three quotes. If for any reason less than three quotes have been obtained the Chief Officer can accept the lowest quote providing that he is satisfied that the reasons for this are acceptable.

20 Definitions

In these Contract Procedure Rules:

20.1 'Contract' means an agreement constituting;

- (i) an offer to do or forbear from doing anything by one party;
- (ii) 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 are not restricted to capital expenditure or large transactions. They are more commonly entered into for small revenue items.

20.2 'The Council' or 'Authority' shall be deemed to include reference to the Cabinet or the appropriate regulatory committee, or person acting in accordance with delegated authority on behalf of the Council.

20.3 '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; or who issues an official order.

- 20.4 'A Consultant' means any person other than an employee, engaged by the Council under a contract for services, to provide professional advice to, and on behalf of, the Council.
- 20.5 'Assign' means the transfer to a third party of the Contractor's interest in the contract.
- 20.6 A Corporate Contract is one for the supply of goods and/or services which can most economically be procured by one central contract and not by Chief Officers acting independently of each other in relation to their department's requirements.
- 20.7 'Competitive Tendering' means the obtaining of more than one tender.
- 20.8 'Invitation to Tender' means the sending of documents to a contractor asking him/her to make an offer to the Council.
- 20.9 'Tender' means an offer made by a contractor or supplier to the Council to execute works, provide goods, materials or services on terms specified by the Council.
- 20.10 'Sub-let' means the allocation of the whole or part of the works to a third party. However:
- (i) the contractor retains the right of control over the performance of the contract;
 - (ii) the contractor is ultimately responsible to the Council for the execution of the contract.
- 20.11 'Serial Tender' means a procedure for dealing with a series of tenders.
- 20.12 'Goods' includes materials, vehicles, plant and equipment.
- 20.13 'Procurement' means arrangements with a view to completing a contractual agreement for the supply of work, goods and services.
- 20.14 'Quotation' means a tender submitted in respect of works, goods or services below £50,000