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## **CONTRACTS PROCEDURE RULES**

### **I. INTRODUCTION**

- (1) The purpose of Contracts procedure rules is to set clear rules for the procurement of goods, works and services for the Borough Council. This will ensure a system of openness, integrity and accountability where the probity and transparency of the process will be beyond reproach. In turn this will lead to better value for money and give confidence to all concerned that the Borough Council is fulfilling its fiduciary responsibilities.
- (2) Any dispute or difference as to the interpretation of Contracts procedure rules and/or any related Code of Practice shall be resolved by the Contract Compliance Officer. All such documents will be regularly reviewed.
- (3) The functions of the Contract Compliance Officer as described below are delegated to the Chief Executive who will then delegate these to another officer and a deputy for the normal performance of this role. An officer will not exercise discretion in the exercise of these functions where they have been directly involved in a procurement, either on a tender evaluation panel or in directly ordering goods.
- (4) The Chief Executive will keep under review a Code of Practice associated with these rules and will have delegated authority to amend this code within the framework of these rules in line with changed circumstances and evolving best practice.

### **2. COMPLIANCE AND CONDUCT OF OFFICERS AND MEMBERS**

#### **(I) COMPLIANCE**

(a) Every contract made by or on behalf of the Borough Council must comply with these Procedure rules, related Code(s) of Practice and the Council's Financial Procedure Rules.

(b) All Council employees and firms engaged to act in any capacity to manage or supervise a Contract must comply with these Procedure rules, related Code(s) of Practice and the Council's Financial Procedure Rules, and each Head of Service must ensure such compliance in the department for which he/she is responsible. Failure to comply with these Procedure rules or the associated Code(s) of Practice may result in disciplinary action and legal proceedings against the officers or firms concerned. All Council employees and firms engaged on the Borough Council's behalf must ensure that any conflicts of interest are avoided.

(c) Subject to paragraph (f) below, no exception to these Procedure rules can be made unless authorised by the Contract Compliance Officer acting under delegated powers, or the Cabinet.

(d) Where a Head of Service wishes to authorise an exception under Contracts procedure rule 2 (1) (c) he/she shall, prior to doing so, arrange for a report to be prepared as prescribed in Appendix I to the Code of Practice, and submit it for

consideration by the Contract Compliance Officer. If the Contract Compliance Officer supports the exception they may either agree to it, if it is within their limits of delegation, or recommend the exception to Cabinet for decision. The appropriate Head of Service shall not authorise an exception without the written agreement of the Contract Compliance Officer, which will be made as described in Appendix 2 to the Code of Practice. If the Contract Compliance Officer decides, having considered the comments made, to authorise an exception, then he/she shall record the decision in accordance with the Council's Delegated Decision process.

(e) The Contract Compliance Officer shall maintain a register of all such exceptions where comments have been made.

(f) National or European Union legislation overrides these Procedure rules.

(g) Where it becomes apparent that a Head of Service has failed in a material or significant way to comply with these Contracts Procedure Rules then the Contract Compliance Officer shall require a report outlining the reasons for the non-compliance and the steps taken to prevent a recurrence. That report, together with the Contract Compliance Officer's comments, will be submitted to the next available meeting of the Audit Committee.

## (2) CONDUCT OF OFFICERS AND MEMBERS

(a) Members must conform to the Members' Code of Conduct as detailed in the Council's Constitution.

(b) Any officer, Member, agent of the Council or firm, whilst acting on the Council's behalf in relation to any contractual matter directly or indirectly concerning the Council, shall conduct themselves in such a manner that the independence and integrity of the Council and the Council's procedures are at all times maintained and are seen to be maintained. Failure to observe such standards of conduct will be regarded by the Council with the utmost gravity.

## 3. PRE CONTRACT REQUIREMENTS

(1) Before commencing any proposed procurement process with an estimated value of £25,000 or more, the appropriate Head of Service must consult the Officers mentioned below:-

(a) the Contract Compliance Officer and

(b) the relevant Cabinet Lead Member, and

(c) the Head of Finance and Property Services

(2) Before entering into a contract with any firm, or arranging for works or services to be carried out by another Service Unit, the appropriate Head of Service must:-

- (a) be satisfied that a Specification which will form the basis of the contract/ arrangement, has been prepared; and
  - (b) have prepared and documented an estimate of the cost of the contract/ arrangement including, where appropriate, any future annual maintenance costs and any internal costs or staffing required to complete the contract/arrangement;
- (3) At the beginning of each financial year the Contract Compliance Officer will submit an Annual Procurement Plan to Cabinet for approval, containing details of the contracts above £25,000 to be let in that financial year. In approving the report, the Cabinet will agree for each contract the form of tender evaluation arrangements, whether the tender specification needs to be approved by Cabinet and whether authority is delegated to the Contract Compliance Officer to agree exceptions and open negotiation procedures. Any contracts not in the annual plan must have their specification and arrangements agreed by Cabinet before procurement begins.
- (4) Before entering into a contract with any firm, the appropriate Head of Service must:-
- (a) be satisfied about the technical capability of such firm; and
  - (b) ensure that all evaluation criteria have been determined in advance; and
  - (c) ensure that these Procedure Rules and any attendant Code(s) of Practice have been complied with, and that the proposed contract represents value for money.

#### **4. SELECTIVE TENDERING PROCEDURE – APPROVED LIST OF TENDERERS**

- (1) This Procedure rule applies to all contracts above £75,000 where Cabinet has approved a Head of Service's request to compile a list of the firms to be invited to tender/quote for specific contracts.
- (2) Any such list must:-
- (a) contain the names of all firms who wish to be included in it, who comply with the criteria set for inclusion, and are approved by the Contract Compliance Officer;
  - (b) indicate the categories and values for which each firm is approved;
  - (c) be kept, maintained and administered by the Contract Compliance Officer.
- (3) At least four weeks before a list is first compiled, notices inviting applications for inclusion on it must be published in one or more local newspapers circulating in the Borough, and in one or more publications circulating amongst firms who undertake contracts of the specified values or categories. Such notices will also be published on the Council's Web Site.
- (4) The list must be amended as required (including deletions due to any circumstances affecting any firm's ability to perform certain contracts), and must be reviewed from time to time in accordance with the procedures set out in Procedure rule 4(3) and relevant Code(s) of Practice.

- (5) Amendments to any list will be recorded by the Contract Compliance Officer.
- (6) Invitations to tender must be limited to firms whose names are on the list produced under this Procedure rule, and must be sent to at least three of those firms selected, or, if there are fewer than three such firms, to all firms. If less than three firms are invited to tender, then the Contract Compliance Officer must keep a record of the reasons for this.
- (7) The approved list shall be amended as required from time to time as part of a process of continual review. Overall review shall take place no less frequently than every three years.

## **5. RESTRICTED TENDERING PROCEDURE**

- (1) This Procedure rule applies to contracts with an estimated value of £75,000 or more, and where no list has been approved under Procedure rule 4, or if the Contract Compliance Officer considers that Procedure rule 4 is inappropriate.
- (2) Public Notice must be given in Source Leicestershire and on the Council's Web Site if the estimated value of the contract exceeds £25,000. The notice must set out details of the proposed contract, and invite firms interested to apply within such period as may be specified, (being not less than ten days), for permission to tender. Clear instructions shall be given regarding the arrangements for the delivery and receipt of applications with particular reference to a deadline for receipt. The rule for the receipt of applications will be the same as that for tenders as set out in Procedure rule 14. (4)
- (3) After the expiry of the period specified in the public notice, invitations to tender stating details of the proposed contract and the last date for receipt of tenders must be sent to at least three of the firms who applied for permission to tender selected by the appropriate Head of Service or, if fewer than three firms have applied and are considered suitable, to all such firms. If less than three firms are invited to tender, the appropriate Contract Compliance Officer must keep a record of the reasons for this.

## **6. OPEN TENDERING PROCEDURE**

- (1) This Procedure rule applies to contracts with an estimated value of £75,000 or more, if no appropriate Approved List exists or if the Contract Compliance Officer considers Procedure rules 4 and 5 are inappropriate.
- (2) In any such case at least ten days public notice must be in Source Leicestershire and on the Council's Website if the estimated value of the contract exceeds £25,000, setting out details of the proposed contract, inviting tenders and stating the last date on which tenders will be received

## 7. NEGOTIATED TENDERING PROCEDURE

- (1) This Procedure rule applies to contracts with an estimated value of £75,000 or more, if the Contract Compliance Officer considers that Procedure rules 4, 5, and 6 are inappropriate.
- (2) The appropriate Head of Service acting under delegated powers may invite or authorise the invitation of tenders from firms by way of a negotiated procedure. Prior to using a negotiated procedure under this Contracts procedure rule, the appropriate Head of Service shall arrange for a report to be prepared as prescribed in Appendix 1 to the Code of Practice and submit it for consideration to the Contract Compliance Officer. If the Contract Compliance Officer supports the use of the negotiated procedure they may either agree to it, if within their limits of delegation, or recommend the exception to Cabinet for decision. The appropriate Head of Service shall not proceed without having obtained the written agreement of the Contract Compliance Officer, which will be made as described in Appendix 2 to the Code of Practice. The negotiated procedure can only be used where the appropriate Head of Service can show that:
  - (a) one of the procedures set out in Procedure Rules 4, 5 or 6 has been used and resulted in unacceptable or irregular tenders or no tenders or no appropriate tenders; or
  - (b) exceptionally where the nature of the procurement or risks involved does not permit prior overall pricing; or
  - (c) the nature of the procurement is such that a precise specification cannot be drawn up; or
  - (d) either of the other procedures have been used and resulted in no tenders or no appropriate tenders; or
  - (e) only one supplier is available for technical or artistic reasons or on account of exclusive rights; or
  - (f) a design contest is appropriate to the scheme. In this case all successful candidates shall be invited to participate in the negotiations; or
  - (g) extreme urgency exists for unforeseen reasons which are not attributable to the Council and the various time limits cannot be met; or
  - (h) through unforeseen circumstances additional services (NB the aggregate amount of the “additional services” must not exceed 50% of the amount of the original main contract) not included in the original contract are required provided; such services cannot be technically or economically separated from the main contract without great inconvenience; or such services although separate from the original contract are strictly necessary for its completion; or
  - (i) there is a need for new services, which are a repetition of work already awarded on an earlier contract. The original notice must state that the negotiated procedure might be used. This procedure may be used only during the first three years of the original contracts.

## **8. COMPETITION REQUIREMENTS FOR CONTRACTS BELOW £75,000**

- (1) Where there is an Approved List of Tenderers in existence then that Approved List must be used as the source of providing the names of contractors from whom quotations are sought.
- (2) The appropriate Head of Service must invite at least three written quotations for a proposed contract with an estimated value of over £5,000 and up to £75,000 using the template documents created for that purpose. For contracts valued between £5,000 and £24,999 the written quotations shall be returned to the Head of Service. For contracts valued between £25,000 and £75,000 the written quotations shall be returned to the Contract Compliance Officer for opening. If three quotations cannot be obtained due to lack of suitable firms prepared to quote, then the Contract Compliance Officer must keep a record of the reasons for this.
- (3) For contracts valued at below £5,000, the Head of Service concerned should proceed in a manner most expedient to the efficient management of the service, having kept a record of the reason for so doing, and also the number of quotations received.

## **9. LAND TRANSACTIONS**

### **(1) APPLICATION**

- (a) This Procedure Rule applies where there is a land transaction.
- (b) “Land transaction” means the acquisition or disposal of, or other dealing with land whether or not buildings, plant and equipment, fixtures and fittings, or other assets are included in that transaction. A transaction concerning only plant and equipment, fixtures and fittings, or other assets is not a land transaction. The grant of temporary licence to occupy is not a land transaction.
- (c) “Major disposal” means a land transaction, which consists of either a disposal of the freehold where the consideration exceeds £50,000, or the grant of lease where the rent exceeds £20,000 per annum or where the premium exceeds £50,000.
- (d) With the exception of Contracts procedure rules 1 and 2, none of the Council’s other Contracts procedure rules apply to land transactions, unless otherwise stated in this Procedure Rule.
- (e) “The property procedures” means the procedures adopted by the Asset Management Team from time to time, in consultation with the Chief Executive’s Team, Cabinet, Contract Compliance Officer and the Head of Finance and Property Services.
- (f) “Best consideration” means the legal obligation upon the Borough Council to achieve a consideration, which is the best that can reasonably be obtained.

## (2) APPROVAL OF MAJOR DISPOSALS

(a) The principle and method of each major disposal must be approved by the Cabinet, who shall consider a report from the Chief Executive's Team, following consultation with the Asset Management Team:

(i) specifying the land to be disposed of;

(ii) confirming whether that land has been declared surplus to the Borough Council's requirements;

(iii) advising upon the proposed method of disposal, and providing the reasons for selecting that method;

(iv) in matters where the Borough Council must achieve best consideration confirming that the proposed method of disposal which has been selected, is most likely to achieve this;

(v) in matters where it is proposed that the disposal should be for less than best consideration, giving reasons for and against seeking best consideration and, following consultation with the Contract Compliance Officer, specifying the relevant legal powers of the Council to accept less than best consideration.

(b) The principal terms of major disposals (except where the approved method of disposal is by auction) must be approved by Cabinet. When determining such matters, Cabinet shall consider a report confirming either that the consideration agreed represents best consideration, or following consultation with the Contract Compliance Officer specifying the relevant legal powers of the Council to accept less than best consideration.

(c) In major disposals where the approved method of disposal is the inviting of formal tenders or informal offers, the disposal must be advertised in at least one local, national, international or specialist newspaper or publication, as determined by the Contract Compliance Officer.

## (3) DEALING WITH FORMAL TENDERS AND INFORMAL OFFERS

(a) The receipt and opening of formal tenders and informal offers will be in accordance with the property procedures. Tenders and offers shall be opened at one time by an officer nominated by the Contract Compliance Officer, and the names of tenderers/offers, and the amounts of tenders/offers shall be recorded in a register kept by the Contract Compliance Officer. Persons present at the opening of tenders/offers shall record their presence by signing the register against the specified details. Tenders/offers must be opened by the nominated officer and witnessed by a senior member of staff. Alterations/errors in tenders/offers and late or otherwise invalid tenders/offers shall be dealt with in consultation with the Contract Compliance Officer.

(b) Where there are major alterations/errors, or where a tender or offer is received late, or is otherwise invalid, the Contract Compliance Officer should arrange for invalid tenders to be returned accompanied by an explanation for this action.



#### (4) DISPOSALS BY AUCTION

(a) In disposals where the approved method of disposal is by auction, at least three auctioneers approved by the Contract Compliance Officer must be invited to provide a written quotation as to commission and additional costs, and the lowest quote must be selected by the Contract Compliance Officer.

(b) A “reserve price” must be set by the Contract Compliance Officer in consultation with the Head of Finance and Property Services and the Council’s consultant Valuer. The reserve price must be disclosed only to the auctioneer and the Council’s representative attending the auction.

#### (5) APPROVAL OF LAND TRANSACTIONS OTHER THAN MAJOR DISPOSALS

The principal terms of land transactions other than major disposals (except where the method of disposal is by way of auction) must be approved by the Contract Compliance Officer or Cabinet as appropriate. When determining such matters, Cabinet shall consider the proposals in an agreed format confirming either that the consideration agreed represents best consideration, or following consultation with the Contract Compliance Officer specifying the relevant legal powers of the Council to accept less than best consideration.

#### (6) APPLICATION OF THE PROPERTY PROCEDURES

All land transactions must be conducted in accordance with the property procedures.

#### (7) FORMALITIES

All contracts and other documentation entered into pursuant to all land transactions shall be in writing, and shall be signed or sealed, as appropriate.

### **10. NOMINATED OR NAMED SUB-CONTRACTORS AND NOMINATED SUPPLIERS**

(1) This Procedure rule applies where a sub-contractor or a supplier is to be nominated to a main contractor.

(2) Where the estimated amount of the sub-contract or the estimated value of the goods or materials to be supplied by a nominated supplier is £50,000 or more, then tenders must be invited in accordance with Procedure Rules 4, 5, 6 or 7.

(3) Where the estimated amount of the sub-contract or the estimated value of goods or materials to be supplied by a nominated supplier is less than £50,000 then quotations must be invited in accordance with Procedure Rule 8.

(4) The terms of any invitation for nominated sub-contractors or suppliers must require that, if selected, the firms would be willing to enter into:-

(a) a contract with the main contractor on terms which indemnify the main contractor against the main contractor’s own obligations under the main contract in relation to the work or goods or materials included in the sub-contract; and

(b) an agreement to indemnify the Borough Council in such terms as may be prescribed.

- (5) The appropriate Head of Service must nominate to the main contractor the firm whose tender or quotation in his/her opinion is the most satisfactory. Provided that, where the tender is other than the lowest received, the Head of Service concerned shall arrange for a report to be prepared as prescribed in Appendix 1 to the Code of Practice and submit it for consideration by the Contract Compliance Officer and the Head of Finance and Property Services. The appropriate Head of Service shall not authorise the nomination without having obtained written comments from the Contract Compliance Officer and the Head of Finance and Property Services, which will be made as described in Appendix 2 to the Code of Practice. If the Contract Compliance Officer and/or the Head of Finance and Property Services state that the Head of Service concerned should not proceed with the nomination and the Head of Service still wishes to proceed, then a joint report should be submitted to Cabinet to make the decision.

## **II. EXCEPTIONS TO REQUIREMENTS OF COMPETITION**

- (1) Subject to Contracts Procedure Rule 11 (2) below and provided that a proposed contract complies with any other Procedure rules, related Code(s) of Practice and Financial Procedure Rules, Contracts Procedure Rules 4, 5, 6, 7, 8 and 10 will not apply to:-
- (a) the purchase of proprietary or patented goods or materials or services which in the opinion of the appropriate Head of Service and the Contract Compliance Officer are obtainable only from one firm, and where no reasonably satisfactory alternative is available;
  - (b) the execution of works or supply of services of a specialised nature which in the opinion of the appropriate Head of Service and the Contract Compliance Officer are carried out by only one firm, and where no reasonably satisfactory alternative is available;
  - (c) the purchase of goods or materials, the execution of works or supply of services for which the appropriate Head of Service and Contract Compliance Officer consider no genuine competition can be obtained;
  - (d) the purchase of a named product required to be compatible with an existing installation as approved by the appropriate Head of Service and Contract Compliance Officer;
  - (e) the instruction of, advice from or service provided by Counsel or instructions to Solicitors to act on the Borough Council's behalf;
  - (f) procurements made through or on behalf of ESPO or any other consortium, association, government body or agency, or similar body provided that tenders or quotations are invited and contracts placed in accordance with procedures, which are broadly equivalent to these Procedure rules and also comply with any national or EU legislation;
  - (g) the purchase of a work of art or museum specimen as approved by the appropriate Borough Council's Art Collection Panel;

- (h) goods, works or services required by the appropriate Head of Service so urgently as not to permit compliance with the requirements of competition;
  - (i) special social care contracts, if in the opinion of the appropriate Head of Service, following consultation with the Contract Compliance Officer, it is considered in the Borough Council's interests and to meet its obligations under relevant legislation;
  - (j) the exercise of statutory grant aid powers delegated to an appropriate Head of Service (which shall be specified by that Head of Service in each case).
- (2) Prior to the use of any exception in this Contracts procedure rule, the appropriate Head of Service shall arrange for a report to be prepared as prescribed in Appendix 1 to the Code of Practice, and submit it for consideration by the Contract Compliance Officer. The appropriate Head of Service shall not proceed without having obtained written comments from the Contract Compliance Officer, which will be made as described in Appendix 2 to the Code of Practice. If the comments of either the Contract Compliance Officer or the Head of Finance and Property Services state that the Head of Services concerned should not proceed, and the Head of Service still wishes to proceed, then a joint report should be submitted to Cabinet to make the decision.

## **12. POST-TENDER NEGOTIATIONS**

- (1) This Procedure Rule relates to negotiations after the receipt of a quotation or tender submitted in accordance with these Procedure Rules.
- (2) Negotiations can only be commenced after the Contract Compliance Officer and the Head of Finance and Property Services, have given the relevant Head of Service written approval of the procedure(s) to be adopted to negotiate. A contract can be entered into only when the Contract Compliance Officer and the Head of Finance and Property Services have given written approval to the outcome of the negotiations.

## **13. SUBMISSION OF QUOTATIONS AND TENDERS**

- (1) If these Procedure Rules require an invitation to quote or tender to be made, such invitations can be made using any available form of communication providing all invited parties receive identical information. Every notice of such invitation must state that no quotation/tender will be accepted unless it is in a quotation/tender envelope, which must bear the word "Quotation" or "Tender", and the subject to which it relates or the labels supplied for the purpose of returning the quotation/tender.
- (2) The quotation/tender must be submitted by the time and date specified in the invitation to quote/tender as being the last time and date for the receipt of quotations/tenders.
- (3) Where the Head of Service estimates the quotation/tender value to be £25,000 or more, all quotations/tenders must be submitted to the Contract Compliance Officer.
- (4) Quotations/tenders submitted in hard copy must bear no details of name, mark, slogan or logo of the firm on the quotation/tender envelope.

#### **14. RECEIPT OF QUOTATIONS/TENDERS**

- (1) Each quotation/tender submitted in accordance with Procedure Rule 13 will remain in the custody of the Contract Compliance Officer until the time appointed for opening.
- (2) The Contract Compliance Officer, upon receipt of a quotation/tender, must indicate on the envelope the date and time of its receipt.
- (3) If the quotation/tender envelope states the name, mark, slogan or logo of the firm, such name, mark, slogan or logo must immediately on receipt be obliterated by the Contract Compliance Officer.
- (4) No quotation/tender received after the date and time indicated for the receipt of quotations/tenders will be considered. Following the opening ceremony in which compliant quotations/tenders are duly recorded in the contract register, non compliant quotations/tenders will then be opened by the Contract Compliance Officer to determine the name and address of the tenderer so they may be returned to the tenderer.

#### **15. OPENING AND REGISTRATION OF TENDERS**

- (1) If tenders are invited under Procedure Rule 4, 5, 6, or 7 they shall be opened at one time by the Contract Compliance Officer, or his nominee, in the presence of a senior Financial Officer. Such tenders must only be opened at meetings pre-arranged by the Contract Compliance Officer.
- (2) The representative of the Contract Compliance Officer must at the time the tenders are opened record:
  - (a) the type of goods or materials to be supplied or disposed of, or the work or services to be carried out;
  - (b) the name of each firm submitting a tender;
  - (c) the date and time of receipt of each tender as recorded on the envelope;
  - (d) the amount of each tender where appropriate;
  - (e) the date and time of the opening of a tender;
  - (f) the signatures of all persons present at the opening of each tender;
  - (g) the reason for any disqualification of any tender;
  - (h) the name of each firm invited to tender but who did not submit a tender, to the extent that this is known;
  - (i) where possible the position by competitive order of value of tenders received;

and ensure that:

- (j) each page of any tender document, which contains prices is initialled by each person present;

## **16. SUBMISSION, RECEIPT, OPENING AND REGISTRATION OF QUOTATIONS**

Every quotation obtained for each proposed contract must be in writing and must be opened at one time and details recorded by the Contract Compliance Officer or relevant Head of Service.

## **17. MINOR ERRORS IN QUOTATIONS/TENDERS**

Minor errors in quotations/tenders shall be dealt with in one of the following way.

Tenderers should satisfy themselves of the accuracy of all fees, rates and prices quoted, since Tenderers will be required to hold these or withdraw their Tender in the event of errors being identified after the submission of Tenders.

If a Tenderer fails to provide fully for the requirements of the Specification in the Tender it must either:

- (i) absorb the costs of meeting the full requirements of the Specification within its tendered price; or
- (ii) withdraw its Tender.

## **18. ACCEPTANCE OF TENDERS/QUOTATIONS AND AWARD OF CONTRACTS**

- (1) No quotation/tender submitted in accordance with the requirements set out above can be excluded from the tender process.
- (2) Where a Head of Service recommends the acceptance of a quotation with a value exceeding £5,000, which is other than the most economically advantageous tender<sup>1</sup>, if payment is to be made by the Borough Council, or the highest quotation if payment is to be received by the Borough Council, or is not within the limits prescribed by Financial Procedure Rules, the Head of Service shall arrange for a report to be prepared as prescribed in Appendix I to the Code of Practice, and submit it for consideration by the Contract Compliance Officer. The appropriate Head of Service shall not authorise the acceptance of a quotation without having obtained written agreement from the Contract Compliance Officer.
- (3) Subject to paragraph (2) of this Procedure Rule, if after evaluation of the tender/quotation, a tender/quotation is within the limits prescribed by Financial Procedure Rules and the appropriate delegated decision under the Councils' constitution has been made and the 'call in' period has expired, then:-

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<sup>1</sup> The most economically advantageous tender is determined by taking into account tendered prices and rates, quality and fitness for purpose and any other factors relevant to the product or service, its supply and any other requirements of the specification as well as any benefits that will contribute to the local community resulting from the provision of the contract.

- (a) In the case of a quotation below £5,000 in value, the appropriate Head of Service may accept the quotation by issuing either an official order or an Agreement signed by the Contract Compliance Officer.
- (b) In the case of a tender or a quotation which has a value not exceeding £500,000, the Chief Executive, or another officer nominated for that purpose, may at the request of the appropriate Head of Service authorise the acceptance of the tender and award the contract on behalf of the Borough Council. This acceptance and award shall be notified in writing to the successful tenderer in a manner specified by the Contract Compliance Officer; or
- (c) All tenders which have a value of £500,000 or more must be the subject of a report to Cabinet, who must authorise the acceptance of the tender and the subsequent award of the contract by the Contract Compliance Officer.
- (d) If Cabinet specifically requires it agreeing the Annual Procurement Plan or specification, or if in the opinion of the nominated officer in 3(b) issues have been raised in the tender evaluation which should be decided by Cabinet, the tender will be referred to Cabinet for decision irrespective of its financial value. Examples of such issues would be if the tender evaluation revealed significant unforeseen risks, or if the evaluation panel was unable to arrive at a consensus.
- (e) Notwithstanding the above, the appropriate Head of Service must, prior to the Borough Council entering into any contract, ensure that the Head of Finance and Property Services has approved the financial standing of the firm to whom it is proposed to award the contract, in accordance with Financial Procedure Rules, and where the contract value exceeds £75,000, the Head of Finance and Property Services has carried out a detailed financial appraisal of the proposed contractor.
- (4) Heads of Service must ensure that 'value for money' will be achieved if an award is to be made after submission of a single tender/quotation.

## **19. VARIATIONS AND CONTRACT EXTENSIONS**

- (1) All variations must be in the form of written instruction to the contractor. The likely cost effect of each variation should be assessed prior to the issue of the instruction. In cases where this would cause serious disruption to the contract, or where immediate action is necessary to prevent danger or damage, the instruction may be issued without prior costing, but in such cases this costing must be completed within seven working days of the instruction being issued.
- (2) Where a variation to a contract is such that without it the contract cannot be properly completed in accordance with the original design, with the performance standards required by the original design, then it is an essential variation.

The Supervising Officer may make essential variations to the contract, which are considered necessary. The cost should be set against contingencies or accrued savings elsewhere in the contract.

Where an essential variation is likely to cause the authorised amount of the contract to be exceeded, the appropriate Head of Service shall seek the necessary approval set out in Financial Procedure Rules prior to issuing the variation.

- (3) Non-essential variations are those which fall outside the definition in paragraph (2) above. Non-essential variations must not be authorised without the appropriate Head of Service consulting with and considering the comments of the Head of Finance and Property Services and also seeking the necessary approvals set out in Financial Procedure Rules.
- (4) All contract extensions, with the exception of “extensions of time” duly authorised within the original terms and conditions of contract, shall be regarded as non-essential variations, and should comply with Section 17 of the Code of Practice.

## **20. WRITTEN CONTRACTS**

- (1) Every contract must be in writing and every contract with a value of £50,000 or more must be signed by the Chief Executive or another officer nominated by him for this purpose. Contracts below £50,000 in value can be signed by Strategic Directors and Heads of Service.

## **21. CONTENT OF CONTRACTS**

The appropriate Head of Service must ensure that:

- (1) Every contract must set out:
  - (a) the work, goods, services, materials, matters or things to be carried out or supplied, and where specific items must be procured from an environmentally sustainable source;
  - (b) the price to be paid and/or the amounts and frequency or the method of calculation of contract payments with a statement of discounts or other deductions;
  - (c) the time(s) within which the contract is to be performed;
  - (d) such other matters referred to in this Procedure rule as are required to be included.
- (2) Every contract with an estimated value of £75,000 or more must state that if the firm fails to comply with its contractual obligations in whole or in part, the Borough Council may:-
  - (a) cancel all or part of the contract;
  - (b) complete the contract;
  - (c) recover from the firm any additional costs in completing the contract;
  - (d) take other legal action against the firm.

- (3) Unless the Contract Compliance Officer and the appropriate Head of Service consider it to be unnecessary or impractical, every contract must provide that:
- (a) liquidated damages must be paid by the firm if it fails to comply with the terms of the contract;
  - (b) where under any contract, one or more sums of money are to be received by the Borough Council, the firm responsible for the payment of such sum or sums must pay interest at the rate stated in the contract from the date when payment is due until the date when payment is received;
  - (c)
    - (i) in the performance of the contract, the firm must act compatibly with the rights contained within UK equalities legislation;
    - (ii) the firm must provide any information reasonably requested relating to the performance of the contract to ensure that the Borough Council meets its statutory obligations under:  
  
The Equality Act 2010;  
Best Value Legislation;  
The Transfer of Undertakings (Protection of Employment) Regulations 2006.
  - (d) in the performance of the contract, the firm must comply with the requirements of the Health and Safety at Work etc Act 1974 and of any other relevant Acts, Regulations, Orders or Rules of Law pertaining to health and safety.
  - (e)
    - (i) the firm must not sub-contract the works or any part of the works, without the prior written consent of the appropriate Head of Service who will take advice from the Contract Compliance Officer, where appropriate;
    - (ii) without prejudice, and subject to any other condition of the contract, no sub-letting by the firm will relieve the firm of its liability to the Borough Council for the proper performance of the contract;
    - (iii) the firm is responsible to the Borough Council for the proper performance and observance by all sub-contractors of all the firm's obligations under the contract as if references in the contract to "the Contractor" were references to the sub-contractors. Failure or neglect by a sub-contractor is deemed to be failure or neglect by the firm;
  - (f) the firm is prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever any part of its contract, without the prior written consent of the appropriate Head of Service (following consultation with the Contract Compliance Officer and the Head of Finance and Property Services);
  - (g) all goods, materials, services or work must comply with any appropriate European Union Specification or Code of Practice or British Standard Specification or British Standard Code of Practice or European Union equivalents in force at the date of tender/quotation;



- (h) the Borough Council is entitled to cancel the contract and to recover from the firm the amount of any loss resulting from such cancellation, if the firm or its employees or agents (with or without its knowledge):-
- (i) does anything improper to influence the Borough Council to give the firm any contract;
  - (ii) commits an offence under the Prevention of Corruption Acts 1889 to 1916 or under Section 117(2) of the Local Government Act 1972;
- (i) whenever under the contract any sum of money is recoverable from or payable by the firm, this sum may be deducted from any sum due or which at any time may become due to the firm under this or any other contract with the Council. Exercise by the Borough Council of its rights under this clause is without prejudice to any other rights or remedies available to the Borough Council under the contract.
- (j) the firm must provide evidence of adequate insurance to cover both Public and Employers' Liability
- (4) Any standard terms and conditions of contract submitted by firms shall not be accepted without advice from the Contract Compliance Officer. Proposed payment arrangements under a contract must be discussed with and agreed by the Head of Finance and Property Services in advance of any contract being entered into.

**REPORT OF:** Head of service  
**TO:** **Contract Compliance Officer**  
**Cc** **Monitoring Officer**  
**Section 151 Officer**

**DATE:**

**SUBJECT: REQUEST OF WAIVE/INVOKE\* CONTRACTS PROCEDURE RULES  
IN RESPECT OF .....**

## **1. BACKGROUND**

1.1 (Sufficient emphasis in the report should be placed on giving the Contract Compliance Officer the necessary background information on the scheme.)

## **2. REASON FOR CONTRACTS PROCEDURE RULES WAIVER/INVOCATION**

2.1 (The report must give the reasons why a request to waive/invoke Contracts procedure Rules is being made. Sufficient information must be included to enable the Contract Compliance Officer to make a decision. Details of the Tenderer(s)/ Contractor(s) to be used together with the purposed contract value should be included under this heading. Information demonstrating value for money is being achieved must also be included, together with information detailing whether an “in-house” provider is capable of undertaking the required works or services and whether they have been contacted to ascertain their willingness to provide the service.)

## **3. CONSEQUENCES IF THE PROPOSED ACTION IS NOT APPROVED**

3.1 (A statement must be included, which informs the Contract Compliance Officer of the consequences of the proposed action not being approved and/or the costed alternatives should any exist. Details should include, but not be limited to, possible delays to the programme due to the need to advertise the requirement, vet responses prior to undertaking a tendering exercise, etc. An indication of the possible increased costs involved in undertaking this process should be given if available.)

## **4. LEGAL IMPLICATIONS**

(The Contract Compliance Officer will consider whether the proposed action would, or might, be held to contravene any enactment, rule of law or Directive of the EU.

## **5. RECOMMENDATION**

(The recommendation must state the specific Contracts Procedure Rule(s) to be waived/invoked, together with an explanation of the meaning of the Contract Procedure Rules).

5.1 The Contract Compliance Officer is recommended to approve the waiver of the following Contracts Procedure Rule(s): -

- Contracts Procedure Rule No 4 – Selective Tendering Procedure – Approved List of Tenderers\*
- Contracts Procedure Rule No 5 – Restricted Tendering Procedure\*
- Contracts Procedure Rule No 6 – Open Tendering Procedure\*
- Contracts Procedure Rule No 8 – Competition Requirements for Contracts Below £50,000\*

OR

5.1 The Contract Compliance Officer is recommended to approve the invocation of the following Contracts Procedure Rule(s): -

- Contracts Procedure Rule No 7 – Negotiated Tendering Procedure\*
- Contracts Procedure Rule No 10 – Nominated or Named Sub-Contractors and Nominated Suppliers\*
- Contracts Procedure Rule No 11 – Exception to Requirements of competition\*
- Contracts Procedure Rule No 18 – Acceptance of Tender/Quotations\*

REGISTRATION OF A REPORT REQUESTING A WAIVER  
OR THE INVOCATION OF CONTRACTS PROCEDURE RULES

N.B. This proforma is used to register all reports seeking a waiver of the Council's Contracts Procedure Rules or where Contracts Procedure Rules are being invoked under exceptional circumstances. This proforma has been completed after receipt of a draft report and the comments of both the Contract Compliance Officer and the Head of Financial Services (or their nominees) have been provided below.

REGISTRATION DETAIL

Report title:

Report to be considered by the Contract Compliance Officer  Registration

Report Originator  Telephone

Date the report received by the Contract Compliance Officer

COMMENTS OF THE HEAD OF FINANCIAL SERVICES DIVISION.

**DECISION OF THE CONTRACT COMPLIANCE OFFICER**

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

**TENDER EVALUATION REPORT**

**Introduction**

This checklist should be completed for all contracts where the quotation/tender is £25,000 or more. The report takes account of good procurement practice and Contracts Procedure Rules requirements.

This checklist should be completed fully and retained on file for a period of 3 years after contract completion.

- The Lead Officer for this procurement was:

Name and Tel: .....

Designation: .....

Service Unit: .....

**A. Establish Tender Evaluation Criteria**

The Borough Council’s policy on Best Value procurement requires that a successful tender will generate the most advantageous balance between quality and cost. This means that a contract need not be awarded solely on the basis of lowest price if a higher cost is justified on value for money grounds bearing in mind whole-life costs and quality related issues.

It is important, therefore, that a means of assessing value for money is built into the tendering process. Mechanisms for doing this include – pricing schedules, questionnaires, method statements, references, etc.

- The evaluation criteria were agreed and documented prior to Any of the tenders being opened.  Yes  No

- Non-commercial considerations have been excluded when Designing evaluation criteria.  Yes  No

- The following criteria have been used as part of the evaluation process. (Please indicate which of the following apply – if any)

- |                                   |                          |   |                          |
|-----------------------------------|--------------------------|---|--------------------------|
| • Technical suitability           | <input type="checkbox"/> | • Aesthetic and/or functional Characteristics | <input type="checkbox"/> |
| • Financial suitability           | <input type="checkbox"/> | • Technical/after-sales services              | <input type="checkbox"/> |
| • Insurance cover                 | <input type="checkbox"/> | • CV’s of the Contractor’s Key Personnel      | <input type="checkbox"/> |
| • Health and safety               | <input type="checkbox"/> | • Quality management systems                  | <input type="checkbox"/> |
| • Experience                      | <input type="checkbox"/> | • Costing/pricing                             | <input type="checkbox"/> |
| • Guarantees                      | <input type="checkbox"/> | • Customer care                               | <input type="checkbox"/> |
| • Complaints and council policies | <input type="checkbox"/> | • Environmental issues                        | <input type="checkbox"/> |
| • Equal opportunities             | <input type="checkbox"/> | • Site inspection                             | <input type="checkbox"/> |
| • Past performance                | <input type="checkbox"/> | • Others (please list)                        | <input type="checkbox"/> |
| • Operating costs                 | <input type="checkbox"/> |   |                          |
| • Delivery dates                  | <input type="checkbox"/> |   |                          |

- **NB** Tenders invited on different levels of uptake will require careful sensitivity analysis to be applied to establish which tender provides best value for money. Yes No N/A
- Details of the evaluation criteria and how they have been applied, (eg, a scoring evaluation panel method statements, etc) are attached. Yes No N/A
- Details of the evaluation criteria were notified to contractors at pre-tender stage. Yes No

**B. Tender Receipt/Holding Arrangements**

All tenderers are entitled to expect that their tenders will remain totally confidential; and will receive full and fair consideration. All invalid tenders should be returned in sealed envelopes. Faxed, telexed, e-mailed or verbal tenders should not be considered, and tenderers should be told so.

- The deadline for receipt of tenders was .....
- Tenders were opened by: .....

**C. Tender Opening and Recording Arrangements**

All tenders submitted in accordance with the instructions to tender should be opened at the same time, after the deadline for the receipt of tenders. The tender opening should be performed by someone not directly involved in the tendering processes and should be witnessed wherever possible.

- The date and time the tenders were open was: ...../...../..... am/pm
- All tender price were recorded in single document signed and dated by all those present at the tender opening. Yes no
- A copy is attached to the checklist Yes no
- Number of tenders received before the deadline for receipt of tenders.
- Numbers of "LATE" tenders received.
- A sufficient number returned to secure true competition. Yes no
- A written explanation was sought from all tenderers failing to tender, and any correspondence retained on file. Yes no

**D. Tenders Evaluation Process**

The evaluation must be carried out fairly, with complete impartiality. (The tenders should be appraised in accordance with the evaluation criteria established before the tenders were opened.)

• All tenders were checked for compliance (ie, tenders were submitted in accordance with the instructions given, and all information requested was submitted).  Yes  no

• All tenders were checked for qualifications (a qualified tender is a tender which seeks to amend or qualify the Council’s contract Terms and Conditions, Specification, or any other document forming the basis on which the tender was sought).  Yes  no

• A list of tenders that were not considered or disqualified is attached, with an explanation why.  Yes  no

• Details of the tender evaluation should be attached to this checklist (these could include, the scoring system as applied to each tender, the report of the evaluation panel, etc). Details are attached.  Yes  no

• Errors in the tenders have been dealt with in accordance with one of the two options in Contracts Procedure Rule 17.  Yes  no

- 1. PR 17 (1) was applied, and details are attached.  Tick to confirm
- 2. PR 17 (2) was applied, and details are attached.  Tick to confirm

• Post tender negotiation has taken place. (Post tender negotiation will only take place in exceptional circumstances [see Contract Procedure Rule 12 for information]).  Yes  no

**E. Communication with Tenderers**

Communication with tenderers should be kept to a minimum and should always be formal. On no account should any officer accept gifts and/or hospitality from any contractor.

• No details of any tenders (including the name of the tenderer) were divulged to any other tenderer at any time.  Yes  no

• Copies of all correspondence (including records of telephone calls; minutes of meetings; and records of site visits) with all tenderers between the dates for ‘receipt of tenders’ and the ‘date of acceptance’ is attached to this checklist.  Yes  no

**F. Tender Acceptance/Contract Award**

- The budget for this scheme is: £.....
- The latest pre-tender estimate is £.....
- The preferred tender value, or estimate contract value, is: £.....
- Where the tender's value exceeds the budget (or varies significantly from the estimate), please attach details of the action taken to remedy the situation  
Information is attached. Yes No
- Having evaluated the tenders and arrived at a decision to award:
  - o The preferred tender is the lowest tender (or the highest tender if the Council is receiving payment). Yes No N/A  
And/or
  - o Contracts Procedures Rule 18 was invoked in order to allow acceptance of a tender other than the lowest tender (or the highest tender if the Council is receiving payment).  
NB. This also applies for tenders accepted in addition to the lowest (or highest) tender where more than one contract is awarded.

**G. Declaration**

This tendering process has been conducted in strict accordance with Council Contracts Procedure Rules.

**Signed** .....

**Dated** .....

**Service Unit** .....

**Signed** .....

**Dated** .....

**Service Unit** .....

**NB** If all, or any part, of the tender evaluation is conducted by an agency or consultant, that agency or consultant must complete the relevant sections of this report