

## **Part 3 – procedure rules**

### **i. contract procedure rules**

#### **CONTENTS**

##### Paragraph

- 1 General
- 2 Delegated authority to enter into contracts
- 3 Contracts up to £50,000
- 4 Requirements for tender
- 5 Open competitive tenders
- 6 Ad hoc approved list
- 7 Established procurement specialist
- 8 Selection of tenderers or invitees
- 9 Form of invitation to tender and submission of tenders
- 10 Extension of time
- 11 Opening of tenders
- 12 Late tenders
- 13 Alterations to tenders
- 14 Acceptance of tenders
- 15 Contracts to be in writing
- 16 Assignment
- 17 Liquidated damages
- 18 Performance bonds
- 19 Retention
- 20 Agency work
- 21 Cancellation
- 22 Nominated sub-contractors
- 23 Engagement of consultants
- 24 Compliance with rules
- 25 Breaches of rules
- 26 Review of financial limits

## 1. General

- 1.1 The following contract procedure rules set out the procedures by which the council will enter into contracts for the provision of goods, services, materials and work. Every contract made by or on behalf of the council shall comply with these procedure rules and no exception from any of the provisions shall be made otherwise than by direction of Council or under rule 4.2
- 1.2 The rules do not apply to contracts for the sale or purchase of land or buildings. Every contract relating to the sale or purchase of any land or buildings shall be in writing and be signed on behalf of the authority by the proper officer. Purchase of land should not be above the current market value as determined by the council's valuer and sales of land should not be below the current market value as determined by the council's valuer. Where this is not the case, a report should be made to Executive or Council as appropriate.
- 1.3 Subject to rule 1.2, every contract made by or on behalf of the council shall comply with:
  - These contract procedure rules
  - The council's financial procedure rules
  - The council's constitution
  - All relevant statutory provisions, including any EC directive
  - Any direction by a council body having appropriate delegated authority.
- 1.4 These contract procedure rules shall not apply or may be varied where or to the extent that Council so resolves, or statute or subordinate legislation prescribes otherwise.
- 1.5 Within these rules, the term "director" shall be deemed to include the Chief Executive and directors.

## 2. Delegated authority to enter into contracts

- 2.1 Every director in relation to the work of his/her department shall have power to accept tenders (where required) and to enter into contracts on behalf of the council.

## 3. Contracts up to £50,000

- 3.1 Tenders need not be invited for contracts estimated to have a value of £50,000 or less but quotations shall be obtained in accordance with the council's financial procedure rules.

## 4. Requirements for tender

- 4.1 Subject to the exceptions in rules 4.2 and 4.3 below, tenders shall be invited where the contract sum is estimated to be £50,001 and above.
- 4.2 Notwithstanding compliance with EU public procurement rules, tenders need not be invited where
  - Procurement of goods, services or works where the procurement procedure to be followed by the council is the subject of express legislation
  - Low value purchases made by a purchasing card that are subject to guidelines issues on the use of purchasing cards
  - Works or services procured in an emergency because of a need to respond to events that were beyond the control of the council (eg natural disasters such as flooding or fires) as long as any expenditure in excess of £30,000 is first approved by the Chief Executive.

Any contract entered into by the council under this exception must not be for a term of more than six months

- Contracts for the acquisition and disposal of land or property, as these are covered by separate policies and procedures
- Contracts of employment
- Works orders with utility infrastructure providers eg gas mains
- Call off or orders placed against framework agreements which the council is permitted to use where the procedures defined in the contract or call off are followed such as ESPO, YPO, GPS.

4.3 Notwithstanding compliance with EU public procurement rules, tenders also need not be invited where

- The appropriate director is of the opinion that the goods or services are supplied only at a fixed price and no reasonably satisfactory alternative is available. Such instances must be brought to the attention of the Head of Finance
- There would be no genuine competition on account of the uniquely specialised nature of the goods/services (sole supplier). Such instances must be brought to the attention of the Head of Finance
- The appropriate director is of the opinion that the goods/services consist of repairs/supply of parts to an existing proprietary machinery/plant
- The contract consists of goods/services the same as currently in use by the council, which are required, in the interest of standardisation, for maintenance or other special reasons. In such a case, a report should be prepared and presented to SLT stating such reasons
- The work to be executed or the goods or materials to be supplied constitute an extension of an existing contract and the proposed extension is at a value not greater than the original contract sum plus RPI and it is considered by the relevant director that, taking into account the cost of re-tendering, the council is unlikely to benefit from a reduced contract sum. The relevant director must obtain Executive approval by submitting a report to the Executive setting out his/her proposal
- The director certifies on a form, approved by the Chief Executive and the Head of Finance that work, goods, materials or services are required so urgently that there is not time to invite tenders, or where compliance would mean that less favourable terms or conditions would have to be accepted, and subsequently submits the certificate to the next meeting of the Executive for approval
- Goods purchased at public auction
- Where purchases are made as a consequence of an existing in-house contract
- Where purchases are made as a consequence of a contract made by another local authority (for example ESPO), the benefits of which the council obtains as a result of participation in a consortium
- Where the council enters into a contract jointly with one or more local authorities or partners, one of whom is the lead authority for that contract subject to the Chief Executive being satisfied that the council's interests will not be adversely affected.

4.4 Where tenders are required, the council's procurement officer must be notified and one of the following methods shall be used:

- Open competitive tender
- Ad hoc approved list
- Standing approved list
- Pre-vetted company list
- Established procurement specialist.

5. Open competitive tenders

5.1 Tenders shall be invited after giving at least 14 days' public notice in at least one of the following media, stating the nature and purpose of the contract, inviting tenders and stating the last date when tenders will be accepted:

- The council's website
- Source East Midlands website – the advert will be placed on the HBBC affiliates page of Source Leicestershire and will be carried on Seven Counties website
- The local newspapers circulating in the borough, especially where there may be local interest in the business opportunity offered
- Appropriate trade journal
- Appropriate national press.

However, when a tender falls under the scope of EC public procurements rules, their timescales and advertising requirements shall apply (seek advice from the council's procurement officer).

6. Ad hoc approved list

6.1 Tenders shall be invited after giving notice in the manner set out in rule 5 seeking applications to be placed on a list from which selected contractors will be invited to submit tenders. However, when a tender falls under the scope of EC public procurement rules, their timescales and advertising requirements shall apply (see advice from the council's procurement officer).

7. Established procurement specialist

7.1 Where large, high value tender exercises take place, in areas in which the council has limited expertise, it may be necessary to engage the use of established procurement specialists. These specialists will undertake the tender process on behalf of the council. At all times, such specialists shall comply with the council's financial and contract procedure rules.

8. Selection of tenderers or invitees

8.1 The selection of persons from whom tenders shall be invited shall be delegated to the appropriate director or his/her nominated representative.

8.2 In inviting applications for inclusion in a list of tenderers or in selecting persons from whom tenders are to be invited, steps shall be taken to ensure fair competition.

9. Form of invitation to tender and submission of tenders

9.1 All tenders shall be required to be submitted on a form of tender approved by the Head of Finance or their nominee. The form shall include a statement that the council will not be bound to accept any tender and reserves the right to accept a tender other than the one which is the most favourable or not to accept any tender at all.

9.2 Tenders are to be submitted electronically through secure software designed and approved for the purpose. In the absence of such software, tenders are to be returned in hard copy (including hard electronic media such as CDs) only. In that event, the invitations to tender shall state that no tender will be considered unless contained in an unmarked plain sealed envelope and endorsed "Tender" followed by the subject to which it relates.

- 9.3 Every tender shall be addressed to the Head of Finance and the tender shall remain in his/her custody, or that of his/her nominated representative, until the time appointed for its opening.
- 9.4 A tender instruction form is to be completed prior to invitation to tender being issued, detailing tenderers and the return date and time. Once completed, this form is to be sent to the procurement officer.
- 9.5 Tenders may not be submitted by normal email and can only be received electronically through secure software designed and approved for the purpose. In the absence of such software, tenders are to be returned in hard copy (including hard electronic media such as CDs) only.
- 9.6 Tender packets or envelopes received must be date stamped and time of receipt recorded and locked away until the specified time for their opening.
10. Extension of time
- 10.1 Where the appropriate director considers it to be in the best interests of the council, the time within which tenders must be received may be extended after giving notice of such extension of time in the following manner:
- Open competitive tenders – in accordance with paragraph 5
  - Ad hoc approved list / pre-vetted company list / established procurement specialist – by giving written notice to each of the selected contractors
  - Standing approved list – by giving written notice to each of the relevant persons on the list.
11. Opening of tenders
- 11.1 All tenders for a contract shall be opened at the same time and within a maximum period of two hours after the closing time for the acceptance of tenders. The tenders will be opened in the presence of the Head of Finance and another director, service manager, or other officer designated for the purpose.
- 11.2 The Head of Finance or their duly authorised representative shall prepare and maintain a register of tenders received and shall record in that register the following particulars:
- The last date and time for the receipt of tenders
  - The date and time the tender was actually received
  - The name of the tenderer and the amount of the tender
  - The date and time they were opened
  - The signature of the officer to whom the tenders were issued after opening.
- 11.3 All persons required to be present at the opening of tenders shall immediately sign against the relevant particulars in the register and shall also sign the tender as evidence of such tenders having been opened by them or in their presence.
- 11.4 Following the opening of tenders invited in accordance with paragraph 6, the director shall write to all persons who were invited to tender but who failed to tender to ascertain the reasons for that failure.

12. Late tenders

12.1 Any tender received late will be returned promptly to the tenderer by the relevant service manager.

12.2 A late tender which has been received, subject to paragraph 12.1, may be opened in the presence of the Head of Finance and another director, service manager or other officer designated for the purpose, to ascertain the name and address of the tenderer but no details of the tender shall be disclosed.

13. Alterations to tenders

13.1 Where the tender reveals errors or discrepancies which would affect the tender figure in an otherwise successful tender, the tenderer shall be told of the errors and discrepancies and given an opportunity of confirming, correcting or withdrawing the offer.

14. Acceptance of tenders

14.1 In accepting a tender, consideration will be given to price and quality. A suitable pre-determined price-quality model (evaluation model) will be devised by the appropriate director in conjunction with the council's procurement officer and will be approved by the Head of Finance. Selection of the best tender will be based on this evaluation.

15. Contracts to be in writing

15.1 Every contract shall be in writing in a form approved by the Legal Services Manager or their nominated representative.

15.2 Every contract shall specify, amongst other things:

- The goods, materials, works, matters or things to be furnished, supplied or done (including any appropriate technical specifications)
- The price to be paid with a statement of discount or other deductions
- Where applicable, the times that the contract is to be performed
- How the contractor will be accountable for performance and any information or reports that they will be required to submit. A statement will be included that the contractor will also be accountable under the council's overview & scrutiny procedure rules.

15.3 The appropriate director shall sign every contract not required to be made under seal on behalf of the council.

15.4 The proper officer shall seal every contract required or intended to be made under seal on behalf of the council.

16. Assignment

16.1 In every written contract for the execution of work or the supply of goods or materials, the following clause shall be inserted:

"The contractor shall be prohibited from transferring or assigning directly or indirectly, to any person or persons whatever, any portion of the contract without the written permission of the council. Sub-letting of any part(s) of the work, except to the extent permitted in writing by the officer concerned, shall be prohibited".

17. Liquidated damages

17.1 Every contract that exceeds £50,000 shall, where considered appropriate by the appropriate director, provide for liquidated damages to be paid by the contractor in case the terms of the contract are not duly performed. The amount to be specified in each such contract shall be determined in consultation with the director concerned and the Head of Finance.

18. Performance bonds

18.1 Where a contract is estimated to exceed £150,000 in value and is for the execution of works or the supply of goods or materials by a particular date or series of dates, the director concerned, in consultation with the Head of Finance shall consider whether the council should require security for its due performance and shall either certify that no such security is necessary or shall specify in the conditions of tender the nature and amount of any security to be given. In the latter event, the council shall require and will take a bond or any other sufficient security for the due performance of the contract.

18.2 Once the requirement of a bond has been specified within the conditions (or clarifications) of tender, any variation to this shall be agreed only by the Head of Finance in consultation with the Executive.

19. Retention

19.1 Works contracts which are estimated to exceed £50,000 in value will be subject to a defects period. The council will retain a percentage of the monies due to the contractor for a period that the relevant director deems appropriate, having regard to the current practice in the relevant industry and to the circumstances of the contract.

20. Agency work

20.1 Where goods or materials are to be used by the council or services provided to the council in connection with works carried out by the council under an agency agreement, rule 4.3 shall be deemed to have been complied with if the Principal has approved the standing approved list or ad hoc list.

21. Cancellation

21.1 Every contract will include a clause allowing the council to cancel the contract and to recover costs if the contractor has offered, or given, any gift or consideration whatsoever as an inducement or reward to obtain the contract, or any other contract with the council. This will include acts by any contractor which represent an offence under section 117 of the Local Government Act 1972.

22. Nominated sub-contractors

22.1 Subject to paragraph 16.2, where a sub-contractor or supplier is to be nominated to a main contractor, the following provisions shall have effect.

22.2 Where the estimated amount of a sub-contract exceeds £50,000, unless the appropriate director certifies that it is not reasonably practicable to obtain competitive tenders, tenders for the nomination shall be invited and dealt with in accordance with these contract procedure rules as if they were for a contract with the council.

- 22.3 A nominated sub-contractor must be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against his own obligations under the main contract in relation to the work or goods included in the sub-contract.
- 23. Engagement of consultants
  - 23.1 In the event of the council engaging the services of consultants, these contract procedure rules will apply.
- 24. Compliance with rules
  - 24.1 Each director and budget holder will ensure that contract rules are complied with, that the council obtains value for money and that the goods, services, materials or works required are necessary and appropriate.
- 25. Breaches of rules
  - 25.1 Where a director discovers that there has been a breach of rules in their service area, they will consult the Head of Finance and instigate appropriate action. This may include, following consultation with the Head of Finance, consideration of invoking the council's disciplinary procedure.
- 26. Review of financial limits
  - 26.1 Council shall review financial limits annually.