

Contract Procedure Rules

INTRODUCTION

The Council is required by law to have procedural rules that govern the letting of contracts.

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PART 1 – Requirements When Letting Contracts

1. Definitions

- (1) In these Contract Procedure Rules, "the Officer" means the Chief Executive, relevant Executive Director or Assistant Director responsible for the letting of the contract or the duly authorised representative of the relevant Executive Director or Assistant Director.
- (2) In these Contract Procedure Rules "appropriate consultation" means consultation with the relevant Portfolio Holder whose delegated responsibility includes the subject matter of the contract, or in whose absence the Leader of the Council or in whose absence the Deputy Leader of the Council.

2. Application and Compliance with Contract Procedure Rules

- (1) Every contract, whether made by the Council on its own behalf or for another Authority shall comply with these Contract Procedure Rules, except as otherwise specified in this Rule.
- (2) No exception from any of the following provisions of these Contract Procedure Rules shall be made otherwise than by direction of the Cabinet or, where it is in the Council's interests to take immediate action, by an Executive Director, after appropriate consultation with the relevant Portfolio Holder.
- (3) Every exception to the provisions of these Contract Procedure Rules made by an Executive Director and the circumstances whereby it is in the Council's interests to take immediate action by which the exception shall have been justified, shall be reported to either the Portfolio Holder or the next meeting of the Cabinet (as appropriate).
- (4) These Contract Procedure Rules shall have no application to contracts or agreements:
 - (a) entered into with statutory undertakers in respect of work carried out or services supplied by them for which they hold a statutory monopoly;
 - (b) entered into by the Council for another Authority pursuant to instructions given by the Principal.
 - (c) comprising internal contracts or agreements between Internal Service Units of the Council concerning the provision of services which have not been exposed to external competition.
- (5)
 - (a) For contracts less than £50,000 officers should seek advice from Legal Services in relation to the formation of contracts unless they consider it impractical to do so.
 - (b) For contracts over £50,000 officers must seek advice from Legal Services in relation to the formation of the contract unless a standard form of contract is used or the relevant Portfolio Holder has agreed that external advisers should be employed.

- (c) In relation to any contract where the officer or contractor wishes to terminate a contract early, the Officer must seek legal advice from Legal Services or from an external services provider where the relevant Portfolio Holder has agreed that external advisers should be employed.

3. European Union Requirements

- (1) These Contract Procedure Rules shall be subject to any procedures which may apply by reason of the United Kingdom's membership of the European Union ("EU").
- (2) A contract or a series of similar contracts of the same type, the aggregation of which exceed the financial limits set in EU Directives shall be let in accordance with the requirements of EU Directives.

The thresholds (net of VAT) applying from 1 January 2018 are:

- *Contracts for supplies estimated to cost not less than £181,302;*
- *Contracts for Services estimated to cost not less than £181,302;*
- *Contracts for public works estimated to cost not less than £4,551,413*

NB. Financial limits set by EU Directives are regularly reviewed.

- (3) Prior to the commencement of each financial year, each Executive Director or Assistant Director shall notify the Assistant Director – Policy & Corporate of all contracts to be let in accordance with paragraph (2) of this Contract Procedure Rule and which in the course of the financial year for Light Touch Regime, Services and Supply Contracts the estimate value of the contract exceeds £615,278 and for all Works Contracts the estimate value of the contract exceeds £4,551,413 a prior information notice will be sent by the Assistant Director – Policy & Corporate to the Official Journal of the European Union (OJEU) on behalf of the Council for these contracts.
- (4) Each contract falling within paragraph (2) of this Contract Procedure Rule shall be let by means of the restricted procedure or if appropriate the negotiated procedure providing that the negotiated procedure is used in accordance with the EU Procurement Rules. Any alternative procedure must be agreed with the relevant Portfolio Holder and /or Cabinet (as appropriate).
- (5) Each contract falling within paragraph (2) of this Contract Procedure Rule shall be let on the basis of the most economically advantageous tender to the Council having regard to price, quality, technical merit, aesthetic and functional characteristics, technical assistance, after sales service, delivery date, delivery period, period of completion and such other criteria as the Council may have specified in the tender documents.
- (6) For each contract falling within paragraph (2) of this Contract Procedure Rule the criteria for the selection of tenderers shall be only those set out in the relevant EU Directive, although officers will be entitled to use existing and new Framework Agreements that have been let by the Council or other relevant bodies in accordance with EU Regulations.

- (7) The Officer shall ensure contract award notices are submitted to the Official Journal of the European Union in accordance with the relevant EU Directive and that written reports and returns are submitted as required by the Directives.
- (8) The Officer shall notify the Assistant Director – Policy & Corporate of all contracts falling within paragraph (2) of this Contract Procedure Rule that are let during the course of the year.
- (9) For each Works, Supplies and Service Contract that falls with EU Procurement Regulations the relevant Executive Director or Assistant Director must keep the following information for each contract let in accordance with the EU Procurement Regulations:
 - (a) the name and address of the Council;
 - (b) the work, service or supplies to be provided under the contract and the value of the consideration to be given under it;
 - (c) the names of the persons whose offers were evaluated in accordance with regulations and where the Council has used the restricted or negotiated procedure, the reasons why those persons were selected;
 - (d) the names of the persons who were unsuccessful pursuant to regulations and the reasons why they were unsuccessful;
 - (e) the name of the person to whom the contract was awarded and the reasons for having awarded the contract to him;
 - (f) if known to the Council the work, service or supplies under the contract which the person to whom the contract has been award intends to sub-contract to another person;
 - (g) in the case of the Council using the negotiated procedure which of the circumstances specified in regulations constituted grounds for using that procedure.

The relevant Executive Director or Assistant Director shall supply a copy of the information specified in paragraphs (a) - (g) above to the Assistant Director – Policy Corporate at the end of each financial year or upon request by HM Treasury or the European Commission.

4. Appointment of Consultants

- (1) The appointment of consultants shall be in accordance with these Contract Procedure Rules except where the established practice of the particular trade or profession does not accord with these Contract Procedure Rules, in which case the established practice of the trade or profession shall be employed with the prior agreement of the relevant Portfolio Holder subject to the estimated value of the proposed services not exceeding the relevant EU threshold.
- (2) In circumstances where the Officer is of the opinion that the established practice of a particular trade or profession does not accord with these Contract Procedure Rules the relevant Officer shall notify the Monitoring

Officer in writing the reasons why Contract Procedure Rules should not apply and in particular which Contract Procedure Rules are not applicable. Thereafter the Monitoring Officer will notify the Officer as to whether he agrees with the Officer's view and in that event the he does the relevant Contract Procedure Rules will not apply.

- (3) The Officer must agree via Legal Services terms of any contract prior to the award of a contract unless using a standard form of contract.
- (4) Assistant Directors shall notify the Assistant Director – Policy & Corporate of the appointment of a consultant to ensure insurance requirements are met.

5. Contracts – Delegation to Officers

- (1) Subject to sub paragraph (2) unless otherwise directed by the Cabinet or the appropriate Portfolio Holder, the Officer shall have authority on behalf of the Council to enter into any contract or variation(s) which do not exceed the value of £100,000 or does not form part of a series of contracts or variations the total aggregate value or amount of which does not exceed £100,000.
- (2) Provided that such contract(s) or variation(s) are in accordance with the existing practice of the Council and the expenditure involved is authorised within the Council's Financial Procedure Rules.

6. Invitation to Tender

- (1) The provisions of this Contract Procedure Rule apply to all contracts except those covered by the provisions of Contract Procedure Rules 3(1), 6(1)-6(3), 8(1)-8(7) and 9(1)-9(6).
- (2) No contract which exceeds an estimated value or amount of £250,000 for works services or supplies, shall be made unless at least ten days' public notice has been given in one or more local newspapers circulating in the Borough of Colchester and if considered desirable by the Officer, in one or more newspapers or journals circulating among such persons as undertake such contracts, expressing the nature and purpose thereof, inviting tenders for its execution and stating the last date when tenders will be received.
- (3) For contracts of an estimated value or amount between £50,000 and £250,000, either public notice may be given as set out in paragraph (2) of this Contract Procedure Rule or the Officer following consultation with the Procurement Team may invite not less than three contractors to tender and the Officer shall keep a written record of this.

[NB. For contracts of an estimated value of up to £50,000 refer to Contract Procedure Rule 9(7).]

- (4) The Officer may send out electronic documents and receive electronic responses. The receipt of tenders must be in accordance with Contract Procedure Rule 24.

7. Tender Short List

- (1) Where by virtue of a decision of the Cabinet or a Portfolio Holder duly authorised in that behalf invitation to tender for a contract is to include persons or bodies who reply to a Public Notice, then the Officer will not be

required to have any shortlist approved by the Cabinet or the Portfolio Holder duly authorised in that behalf, providing the Officer is complying with all other obligations under these Contract Procedure Rules, best value and the EU Procurement Regulations and any other criteria which apply to the selection criteria.

- (2) Public notice shall be given as set out in Contract Procedure Rule 6(2) inviting applications from persons or bodies who undertake such contracts to be placed on a list from which contractors selected by the Council will be invited to submit tenders for such work.
- (3) After the expiration of the period specified in the public notice, invitations to tender for the contract shall be sent to not less than three of the persons or bodies who applied for inclusion in the list, or if fewer than three persons or bodies have applied and are considered suitable, to all such persons.
- (4) Where the contract is within the works or services areas approved by the Council as being suitable for execution by In-house Providers, such Providers shall in all cases be invited to tender for contracts for the provision of such works or services, unless the contract is let in accordance with the EU Procurement Regulations in which case the relevant Executive Director or Assistant Director must follow the selection criteria set out in accordance with the EU Procurement regulations.

8. Standing Approved Lists

- (1) This Contract Procedure Rule shall have effect where Contract Procedure Rule 3 does not apply and where the Cabinet have determined that a list shall be kept of persons to be invited to tender for contracts for work, services or supplies of specified categories, values or amounts, or for the execution of specified categories of works.
- (2) The list shall:
 - (a) be compiled and maintained by the Officer having taken due consideration of each person or body's competence, financial position, integrity and organisational quality; and
 - (b) contain the names of all persons or bodies who wish to be included on the approved list and who are approved by the Cabinet, appropriate Portfolio Holder or the relevant Executive Director or Assistant Director; and
 - (c) indicate in respect of a person or body whose name is so included, the categories of contract and the estimated values or amounts in respect of those categories for which approval has been given.
- (3) At least four weeks before the list is first compiled, notices inviting applications for inclusion in it shall be published in one or more local newspapers circulating in the Borough of Colchester and in one or more newspapers or journals circulating among such persons or bodies as undertake such contracts.
- (4) The list shall be reviewed at intervals not exceeding two years unless the person or bodies who have been included on the approved list have been

included by virtue of a Framework Agreement awarded in accordance with Contract Procedure Rule 10 in which in case the review will be carried out in accordance with the Framework Agreement (if applicable).

- (5) At least four weeks before each review referred to at (4) of this Contract Procedure Rule, each person or body whose name appears on the list shall be asked whether the name is to remain thereon and notices inviting applications for inclusion on the list shall be published in the manner set out in paragraph (3) of this Contract Procedure Rule.
- (6) Where by virtue of a decision of the Cabinet, Portfolio Holder or Officer (as appropriate) the invitation to tender for a contract shall be limited to persons or bodies whose names appear on the list, an invitation to tender for that contract shall be sent to at least three of those persons or bodies whose names appear on the list as being approved for a contract of that value, amount or category or if there are fewer than three such persons or bodies, to all such persons or bodies.
- (7) If there are more than three such persons or bodies, the persons or bodies to whom invitations are sent shall be selected in the manner determined by the Cabinet , Portfolio Holder or Officer (as appropriate) either generally or in relation to a particular contract or category of contracts.
- (8) The list shall include In-house Providers in respect of all work, services or supplies areas approved by the Council as being suitable for execution by such providers, which shall in all appropriate cases be invited to tender for contracts for the provision of such work, services or supplies.
- (9) Subject to Contract Procedure Rules 3 and 8(10) the Officer will not be required to maintain a list under Contract Procedure Rule 8 if the Officer uses an external organisation to maintain a list of suitable persons who can be invited to tender on behalf of the Council. Provided that the use of such external organisation has been previously agreed with the Cabinet or the relevant Portfolio Holder. The list maintained by the external organisation pursuant to this Contract Procedure Rule shall include In-house Providers or shall be deemed to include In-house Providers in order to comply with Contract Procedure Rule 8 (8).
- (10) When the Council, acting for another authority, is to invite selective tenders for the supply of work, services or supplies, the persons or bodies to be invited to tender shall be selected from the Standing Approved List maintained by the other authority.

9. Exceptions to Requirement to Invite Tenders

- (1) Unless Contract Procedure Rules 2 and 3 apply nothing in these Contract Procedure Rules shall require tenders to be invited in respect of contracts falling within the following categories.
- (2) In the case of contracts for the work, services or supplies:-
 - (a) the work, services or supplies are proprietary articles or are sold only at a fixed price and no reasonably satisfactory alternative is available; or
 - (b) the prices of the work, services or supplies are wholly controlled by

trade organisations or Government Order and no reasonably satisfactory alternative is available.

- (3) The work, services and supplies provided consist of repairs to or the supply of parts of existing proprietary machinery or plant.
- (4) In the case of specialised work, services or supplies or where effective competition is for any reason prevented and, with the consent of the appropriate Portfolio Holder or where appropriate (depending on the relevant financial threshold) the Cabinet, the Officer may obtain estimates from one or more persons or bodies and upon satisfaction therewith and, with the consent of the appropriate Portfolio Holder or where appropriate (depending on the relevant financial threshold) the Cabinet, may make the contract with such person or body.
- (5) With the prior consent of the Cabinet, Portfolio Holder or Officer (as appropriate) any existing contract entered in accordance with these Contract Procedure Rules can be extended (here meaning where there is not an existing contractual right to extend the term) provided that it is established that the contract needs to be extended for justifiable operational reasons and that this does not cause the relevant EU procurement threshold to be exceeded having due regard to the aggregation rules referred to in Contract Procedure Rule 3.
- (6) Tenders shall have been invited on behalf of any consortium, collaboration or similar body and/or procurement arrangement of which the Council is a member, in accordance with a method of letting contracts adopted by such body. Provided that where tenders are so invited as aforesaid by an Officer of the Council, the delivery, opening and acceptance of tenders shall comply with the provisions of these Contract Procedure Rules, save where those provisions are inconsistent with any method by which tenders so obtained on its behalf are dealt with unless the Cabinet and /or Portfolio Holder has agreed that their tender procedures shall prevail.
- (7) For a contract with an estimated expenditure of up to £50,000 and it is not considered by the Officer to be reasonably practicable or in the Council's interests to invite tenders, the Officer must seek three written quotations for the contract unless it is impracticable so to do.
- (8) Any land disposed of by the Council shall be in accordance with the Land Disposal Procedure Rules contained at Schedule 1 to these Contract Procedure Rules.

10. Framework Agreements

- (1) Where the Council has either entered into a Framework Agreement itself or is procuring via an external Framework Agreement the Officer may place orders or seek tenders under a Framework Agreement by reference to a price list or other document in order to obtain best value in terms of quality and price and must ensure that there is reasonable competition under the Framework Agreement in order to ensure that the Council obtains best value.
- (2) Any order or tender placed or sought under a Framework Agreement must

comply with the requirements contained in Contract Procedure Rules 15, 16, 24, 26 and 30.

- (3) Any call off arrangement made under the terms of any Framework Agreement which exceeds the sum of £50,000 shall be opened in accordance with Contract Procedure Rule 26 and reference to tenders shall be construed accordingly.

11. Rights of Third Parties

- (1) There shall be inserted in every written contracts clause that excludes the rights of third parties under the Contracts (Rights of Third Parties) Act 1999, unless the Officer considers it appropriate to do so.

12. Assignment

- (1) There shall be inserted in every written contract for work, services or supplies a clause which prohibits the contractor from assigning the contract without the written consent of the Council.

13. Liquidated Damages

- (1) Every contract which is estimated to exceed £250,000 in value or amount for work, services or supplies by a particular date or series of dates, may provide for liquidated damages to be paid by the contractor in case the terms of the contract are not duly performed. The amount, if any, to be specified in each such contract shall be determined by the Officer, after consultation with the Section 151 Officer.

14. Security for Performance

- (1) Where a contract is estimated to exceed £1m in value or amount and is for work, services or supplies by a particular date or series of dates, the Officer shall consider whether the Council should require security for its due performance and shall, after consultation with the Section 151 Officer, either certify to the Monitoring Officer that no such security is necessary or shall specify in the conditions of tender, the nature and amount of the security to be given.
- (2) In the event of security being required, the Council shall require and take a Bond or other sufficient security for the due performance of the contract and in such cases, no works shall be started until a satisfactory Bond or other security has been provided, provided that the Officer, after consultation with the Section 151 Officer and the Monitoring Officer, may agree that in exceptional circumstances, such works may be commenced prior to the Bond or sufficient security being provided, subject to the contractor first agreeing in writing that no payments under the contract will be made by the Council until such Bond or security has been provided by the contractor.
- (3) Where a tender specification requires the provision of a Bond or other sufficient security for due performance of the contract and the successful tenderer is another local authority or public body, following acceptance of the tender, the Officer after consultation with the Section 151 Officer, may certify to the Monitoring Officer that no such security is necessary.

- (4) In any other case, the Officer may require security for due performance of the contract if the Officer so considers it necessary.

15. Cancellation for Corruption

- (1) There shall be inserted in every written contract of a value in excess of £50,000, a clause empowering the Council to rescind the contract and to recover from the contractor the amount of any loss resulting from such cancellation:
- (a) if the contractor shall have offered or given or agreed to give to any person, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Council or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council; or
 - (b) if the like acts shall have been done by any person employed by the contractor or acting on the contractor's behalf (whether with or without the knowledge of the contractor); or
 - (c) if in relation to any contract with the Council, the contractor or any person employed by the contractor or acting on the contractor's behalf shall have committed any offence under the Bribery Act 2010, or shall have given any fee or reward, the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

16. Collusive Tendering Certificate

- (1) In every tender submitted to the Council the tenderer shall certify that the tender sum has not been fixed or the amount adjusted by or under or in accordance with any agreement or arrangement with any other person.
- (2) In every tender submitted to the Council, the tenderer shall certify that none of the following acts have been done and undertakes not to do any of the following acts at any time prior to the formal acceptance of the tender:
- (a) communicating to a person other than the person calling for the tender the amount or approximate amount of the proposed tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain insurance premium quotations required for the preparation of the tender;
 - (b) entering into any agreement or arrangement with any other person that the tenderer shall refrain from tendering or as to the amount of any tender to be submitted;
 - (c) offering or paying or giving or agreeing to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the said work any act or thing of the sort described above.

17. Indemnities

- (1) The Officer must ensure that any external party who procures works services and supplies on behalf of the Council indemnifies the Council against any liability arising directly or indirectly from the procurement process.

18. Nominated Sub-Contractors and Suppliers

- (1) The Officer may nominate a sub-contractor to a main contractor provided that it complies with the EU Procurement Regulations and these Contract Procedure Rules and does not cause the amount of the main contract to increase unless it is approved by the Officer in accordance with paragraph (3) of this Contract Procedure Rule.
- (2) The Officer must consider whether any sub-contractor should provide direct warranties to the Council for the due performance of the works supplies services as appropriate.
- (3) Where the tender exceeds the prime cost sum in a main contract previously approved by the Cabinet or relevant Portfolio Holder, the Officer shall submit a report to the Cabinet or relevant Portfolio Holder who shall determine whether or not to instruct the Officer to nominate the tenderer to the main contractor.

19. European Standards

- (1) Where the Officer gives reference to a British Standard or a specific named product he/she must state the British Standard or specific named product and then the words 'or equivalent' unless the Officer can demonstrate that there is no equivalent.

20. Certification of Contracts

- (1) No Officer shall enter into a contract that is required to be certified in accordance with the Local Government (Contracts) Act 1997. Any request for certification shall be referred to the Monitoring Officer who will decide if such certification is appropriate and if appropriate, will arrange for the certification to be given in accordance with the Act.

21. In-House Providers

- (1) For the purposes of these Contract Procedure Rules, an In-house Provider seeking to obtain a contract from the Council in competition with external tenderers shall be treated in similar manner to any other potential contractor and references herein to "tenderers" and "contractors" shall be construed accordingly.

22. Statutory Obligations

- (1) The Officer shall ensure that every contract awarded complies with all the Council's statutory obligations and in doubt the Officer must seek advice from Legal Services or an external adviser. The Officer must also ensure that all contracts let by the Council contain suitable provisions in relation to compliance with statutory obligations.

23. Consultants – When Acting as Contract Supervisor

- (1) It shall be a condition of the engagement of any consultant (not being an officer of the Council) who is to be responsible to the Council for the supervision of a contract on its behalf, that in relation to that contract that person shall:
 - (a) comply with the requirements of these Contract Procedure Rules in the same way as the Officer, subject to the modification that the procedure to be followed in inviting and opening tenders shall be approved in advance by the Officer; and
 - (b) at any time during the performance of the contract, produce to the Officer on request, the records maintained in accordance with these requirements; and
 - (c) on completion of the contract, transmit such records to the Officer.

24. Receipt and Custody of Tenders

- (1) All tenders in relation to works, goods or services will only be accepted if submitted and received by the Council electronically via the Delta Portal (or such other comparable system as shall be approved by the Monitoring Officer from time to time). In circumstances when it is established that the tender documents are too large by the Monitoring Officer the following procedure shall apply:
 - (a) If due to the nature of works documentation, if tenders cannot be submitted electronically, tenderers must be informed that their tender will only be considered if they are:
 - (b) sent in a plain sealed envelope or parcel with a label on which is printed the word "Tender" followed by the subject to which it relates and then the words "Closing date 12 noon on" followed by the closing date; and
 - (c) the sealed envelope or parcel does not contain any name or mark indicating the sender, provided that a postage stamp, postal franking mark or customs declaration(or similar) shall not be regarded as being such a name or mark ; and
 - (d) such envelope or parcel shall be addressed to and remain in the custody of The Legal Services Manager, Rowan House, 33 Sheepen Road, Colchester, CO3 3WG until the time appointed for their opening.
- (2) Every tender received by the Officer shall be numbered and marked with the date and time of receipt and a copy provided to Legal Services.

25. Opening of Tenders

- (1) All tenders received both electronically or hard copies for any contract following an invitation to tender pursuant to these Contract Procedure Rules shall be opened at the same time.
- (2) Tenders for contracts of an estimated value not exceeding £250,000 shall be opened in the presence of at least two officers designated for the purpose by the Monitoring Officer.
- (3) Tenders for contracts of an estimated value in excess of £250,000 but not exceeding £500,000 shall be opened in the presence of the Monitoring Officer, or an officer designated by the Monitoring Officer, and the Officer, or an officer designated by the Officer.
- (4) Tenders for contracts of an estimated value in excess of £500,000 shall be opened as under paragraph (3) of this Contract Procedure Rule though in addition the relevant Portfolio Holder shall be given not less than 48 hours' notice by the Officer of the time and place appointed for the opening of tenders and may attend or appoint another Portfolio Holder to be in attendance.

26. Late or Non-Compliant Tenders

- (1) Records of any non-compliant tenders and of the date and time of receipt of any late tenders must be kept by the Officer.
- (2) Tenders received late may only be considered if the other tenders have not yet been opened and:
 - (a) failure to comply is the Council's fault; or
 - (b) it is clear that the tender was sent in such a way that in the normal course of events it would have arrived on time
- (2) It shall be the responsibility of the tenderer to ensure that the tender is received by the Council by the specified time and the marking of the tender envelope with the date and time of receipt by an officer of the Council in the presence of the tenderer shall be conclusive proof. The Officer shall ensure that every tenderer is aware of this requirement.
- (3) All tenders received after the specified time shall be so marked in the register of tenders maintained by Legal Services and shall be promptly returned to the tenderer unopened (except to the extent necessary to ascertain the tenderer's name) by the Legal Services Manager and no details of such tender shall be disclosed. Provided that this Procedure Rule will not relate to any external arrangement entered into by the Council in accordance with Contract Procedure Rule 8(6).

27. Alterations to Tenders

- (1) Persons or bodies tendering shall not be allowed to alter their tender after the specified time for the receipt of tenders, except as provided in paragraphs (2) and (3) of this Contract Procedure Rule.

- (2) If errors are found in tenders, a tenderer shall be given details of such errors and afforded an opportunity of confirming or withdrawing the offer.
- (3) In cases where a priced Bill of Quantities or other priced document is submitted with the tender and arithmetical errors are found in such document, a tenderer shall be given details of such errors and afforded an opportunity of adjusting the rates and prices inserted therein in accordance with the provisions of the form of contract.

28. Acceptance of Tenders

- (1) If a decision to accept a tender by the Cabinet, a Portfolio Holder or the Officer amounts to a Key Decision, then the tender shall not be formally accepted until the call-in period contained in the Call-in Procedure has expired.
- (2) Subject to the following paragraphs of this Contract Procedure Rule, tenders shall be accepted by the Cabinet, relevant Portfolio Holder or by the Officer in respect of those matters for which authority to enter in a contract has been delegated to the relevant Portfolio Holder or the Officer.
- (3) For contracts having an estimated value in excess of £50,000 formal notification of the acceptance of a tender shall be given in writing by the Legal Services Manager or by an officer duly authorised by the Monitoring Officer.
- (4) Except where Contract Procedure Rule 3 applies the Cabinet or an relevant Portfolio Holder shall not accept or recommend the acceptance of a tender other than the lowest tender, if payment is to be made by the Council, or the highest tender if payment is to be received by the Council, unless it has considered a written report from the Officer.
- (5) Where the Officer acting under Contract Procedure Rules 13 or 29 accepts a tender in the circumstances described in paragraph (4) of this Contract Procedure Rule, the Officer shall advise the Monitoring Officer of the proposed course of action and forthwith record in writing the reasons for so doing and such record shall be available for inspection.

29. Standstill Period on EU Procurement Award Decisions

- (1) There is a requirement for a "standstill" period between the notification of an award decision in a public procurement covered by EU Directives and the conclusion of a contract with a supplier or suppliers.
- (2) For any Council procurements that are covered by the full regime of EU directives, a minimum of ten (10) calendar days mandatory standstill period is required between communication of the notification of award decision and contract conclusion, with day one (1) being the day after the award decision is issued, by fax or e-mail, and in writing to all tenderers. This rule does not apply to procurements where there is only one regular tender received.
- (3) The notification by the Council of the award decision, based on the most economically advantageous tender, should contain;
 - (a) the award criteria;
 - (b) the score the tenderer obtained against those award criteria;

- (c) the score the winning tenderer obtained;
 - (d) the name of the winning tenderer.
- (4) The requirement to debrief in this manner highlights the need for a robust and fair evaluation matrix as well as a transparent and auditable evaluation process. Consequently officers will need to have all the elements of the debriefing process in place prior to the notification, as a rapid response is likely to be required to any request by an unsuccessful bidder. Officers should seek appropriate advice regarding any potential Freedom of Information Act implications prior to disclosing any details.
- (5) If an unsuccessful bidder requests further information by the end of the second working day of the standstill period, the Council must provide additional information as part of the debriefing process. The additional debriefing will include;
- (a) the reasons why the tenderer was unsuccessful and;
 - (b) if the tenderer submitted an admissible tender, the characteristics and relative advantages of the successful tender
- (6) The Council is required to provide such additional information at least 3 working days before the end of the standstill period. This will require the Council to take into account the effect of UK public holidays. If a supplier misses the two working day deadline, the normal debriefing requirements which the directive indicates would apply (purchaser must debrief promptly and in any case 15 days from a written request).
- (7) If the Council enters into any arrangement with a third party in accordance with Contract Procedure Rule 9 (6) the Officer must ensure that the external party complies with this Contract Procedure Rule 29.

30. Contracts in Writing

- (1) With the exception of contracts entered into by the Council for another Authority pursuant to instructions given by the Principal, every contract which exceeds £50,000 in value shall be in writing and shall specify:
- (a) the work, services and supplies, matters or things to be executed, furnished, had or done; and
 - (b) the price to be paid with a statement of discounts and other deductions; and
 - (c) the time or times within which the contract is to be performed.

Where the Officer is not required to enter a formal contract in writing the Officer shall be required to keep a written record of all the agreed terms and conditions relating to the work, services and supplies procured.

- (2) Every contract in writing shall be signed by the Council as follows:
- (a) contracts up to a value of £100,000 shall be signed by the Proper Officer;

- (b) contracts of a value in excess of £100,000 but not exceeding £500,000 shall at the discretion of the Proper Officer either be signed by the Officer and the Proper Officer or be sealed by the Council;
 - (c) contracts of a value in excess of £500,000 shall be sealed by the Council;
 - (d) contracts for the purchase and/or disposal of land and/or buildings where approval has been obtained by the Officer in accordance with the Council's Constitution will be signed by the Proper Officer notwithstanding any other provisions contained in these Contract Procedure Rules.
- (3) The Officer shall ensure that a copy of the completed contract documentation is provided to Legal Services for secure storage.

31. Register of Contracts

- (1) The Assistant Director – Policy & Corporate shall maintain a register of all contracts entered into by the Council (including consultants) and shall specify from time to time exactly what details need to be provided by the Officer.
- (2) Each Executive Director and Assistant Director shall ensure that details of every contract entered into by them or their service area (as appropriate) shall be provided to the Assistant Chief Executive for inclusion in the register

32. Matters of Urgency

- (1) Nothing in these Contract Procedure Rules shall preclude the operation of Council Procedure Rule 18 and Cabinet Procedure Rule 22 in relation to matters of urgency.

Colchester Borough Council

Land Disposals Procedure

INTRODUCTION

This procedure describes the Council's process for the disposal of land and its purpose is to make the Council's procedure transparent.

For the purposes of this procedure, a disposal of land means any freehold disposal, by sale or exchange, of Council owned land or buildings and any disposal by the granting of a lease for a period greater than 7 years. Leases of 7 years or less are not covered by this procedure.

Each land disposal will be treated on its own merits and nothing in this procedure will bind the Council to a particular course of action in respect of a land disposal. The Council's actions in disposing of land are subject to statutory provisions, in particular, to the overriding duty on the Council under section 123 of the Local Government Act 1972 to obtain the best consideration that can be reasonably obtained for the disposal of land. This duty is subject to exceptions contained in the ODPM Circular, Disposal of Land for less than best consideration - Local Government Act 1972: General Disposal Consent (England) 2003 "General Disposal Consent".

The Council will dispose of land in accordance with:

- Statutory provisions
- Procedures contained within the Council's Constitution

Land will not be disposed of at less than the best consideration that can be reasonably obtained, unless the transaction is covered by the exceptions contained within the General Disposal Consent.

LAND DISPOSAL TYPES

1.0 Disposal by Private Sale

1.1 A disposal by private sale may take place after a period during which the land is placed on the market including advertising and generally making known including signage that it is available for sale. Each bid will be assessed on the basis of the Council's responsibility to obtain the best consideration that can be reasonably obtained.

1.2 If land is to be sold by private sale without being marketed then reasons justifying this course of action must be recorded in writing.

A private sale without the land being marketed may be justified by way of example where:

- (a) the land to be disposed of is relatively small in size and an adjoining or closely located landowner is the only potential or likely purchaser; or

- (b) the nature of the Council's land ownership and that of the surrounding land ownership is such that the land must be sold to adjoining or surrounding landowners if best consideration is to be obtained; or
- (c) the Council's land is part of a larger area of land that is proposed for development, redevelopment or regeneration and the nature and complexity of the proposed development of the overall site is such that the Council's strategic objectives and best consideration can only be achieved by a sale to a purchaser with an existing interest in land in the area.

1.3 A legally binding agreement will not be reached until contracts for the lease or sale of land are signed and (if applicable) exchanged.

2.0 Disposal by public auction

2.1 Sale by public auction may be appropriate where there is no obvious potential purchaser and where speed and the best consideration can be obtained by auction.

2.2 Any decision to proceed by way of public auction must be recorded in writing and the record shall include the reasons justifying a sale by public auction, reserve price (if any) and authorise an officer to attend and act on behalf of the Council.

2.3 The binding contract will be made on the acceptance of the highest bid providing it has reached the reserve price. Contracts for the sale or lease will immediately be signed and exchanged.

3.0 Disposal by formal tender

3.1 A sale by formal tender may be appropriate where the land ownership is not complex and the Council is seeking obligations to be placed on the successful tenderer which are clear and capable of specification in advance.

3.2 Formal tenders will not be appropriate where the land ownership position is complex or the development proposals for the land are insufficiently identified or otherwise incapable of detailed specification at the pre-tender stage.

3.3 Any decision to proceed by way of informal tender must be made in writing and include the reasons justifying a sale by informal tender. The Council's rules for tender offers contained in the Contract Procedure Rules will be followed. Any exceptions to the usual tendering process must be authorised by the Monitoring Officer (as defined in the Council's Constitution).

3.4 The nature of a formal tender process is that a legally binding relationship is formed when the Council accepts a tender in writing. It is essential therefore that every aspect of the disposal is specified in the tender documents

3.5 Sale of land by formal tender will require a detailed specification to be prepared. This will specify the land being sold, any requirements to be met by the tenderer and any obligations that must be met.

- 3.6 The Council will place a public advertisement seeking expressions of interest and publicise the selection criteria by which it will assess tenders. Those individuals selected will then be invited to submit their tender bids.

4.0 Disposal by exchange of land

- 4.1 Disposal by exchange of land will be appropriate when it is advantageous to the Council and other parties to exchange land in their ownerships and will achieve best consideration for the Council.
- 4.2 Any decision to proceed by way of exchange must be made in writing and include the reasons justifying the manner of disposal.
- 4.3 The exchange will usually be equal in value. However, an inequality in land value may be compensated for by other means where appropriate and with the agreement of the relevant Assistant Director. This will be determined by means of an independent valuation.

5.0 Disposal by informal/negotiated tender

- 5.1 A disposal by informal/negotiated tender differs from a formal tender in that neither the Council nor the successful bidder is legally obliged to enter into a contract for the disposal of land. The informal/negotiated tender process allows the Council to identify one preferred bidder with whom it may then negotiate further detailed terms or proposals for the development of the land concerned.
- 5.2 The Council will use a public advertisement to request informal development proposals for land that meet a given specification. This process is particularly useful for large or complex development or regeneration sites requiring development and where the proposals may need to be developed in co-operation with the preferred bidder to meet the Council's strategic objectives and to achieve the best consideration that can be reasonably obtained.
- 5.3 Any decision to proceed by way of informal/negotiated tender must be made in accordance with paragraph 3.3 of this Procedure.

6.0 Receipt and Opening of tenders

- 6.1 Formal and informal tenders must be submitted in accordance with Contract Procedure Rule 24.
- 6.2 Opening of formal and informal tenders must comply with Contract Procedure Rule 26.

7.0 Late bids and other considerations

- 7.1 In the context of the methods of land disposal dealt with in this document, a late bid may occur:-
- (a) in the case of a private sale, after a sale or lease has been agreed, but before contracts are signed or (if applicable) exchanged; or

- (b) in the case of a public auction, after the auction has been closed, but the reserved price not having been met; or
- (c) in the case of a formal tender, after the closing date for tenders, but before opening of the tenders; or
- (d) in the case of disposal by exchange after a sale or lease has been agreed, but before exchange of contracts; or
- (e) in the case of an informal/negotiated tender, after receipt of bids, but before contracts are signed or (if applicable) exchanged

7.2 Each “late bid” will be considered in the context of the individual circumstances at the time. This may include commercial reasons. The Council’s approach to “late bids” will vary depending upon the method of land disposal used. In each case, its overriding duty will be to obtain best consideration that it can reasonably obtain (subject to any exceptions in the General Disposal Consent). The Council’s approach to late bids is as follows:

- (a) The Council discourages the submission of late bids in all cases when it is disposing of land. It will attempt to minimise problems by aiming for early exchange of contracts.
- (b) Where land is being disposed of by way of formal tender, bids received after the deadline for receipt of tenders will only be considered prior to the opening of tenders.
- (c) Late bids cannot be considered where land is being disposed of by public auction after a successful bid has been accepted.
- (d) Except as provided in paragraphs (b) and (c) above, until the Council has entered a legally binding contract or agreement with another person it will consider late bids unless there are good commercial reasons for not doing so. This should be explained to any purchaser when a disposal of land by private sale or negotiated/informal tender is agreed.
- (e) Consideration of a late bid does not mean that it will necessarily be accepted even if it is the highest bid. The Council will take into account the likelihood of the late bid proceeding to completion in a timely manner and the possibility of late bids being used as a spoiling or delaying tactic.
- (f) Subject to the above, the Council may, in appropriate circumstances ask both the late bidder and the person to whom the land was previously to have been sold and / or the otherwise highest bidder, to submit their last and final bids in a sealed envelope by a set deadline.
- (g) A decision on whether to accept a late bid for a private sale, informal tender or by exchange will be made either by Cabinet or in accordance with the Schemes of Delegation to Cabinet Members or Officers (as appropriate).

8.0 General Disposal Consent

- 8.1 The General Disposal Consent makes provision for the Council to dispose of land at less than full market value, known as an “under-value”. Specified circumstances must apply as follows:-
- (a) The Council considers that the purpose for which the land is to be disposed of is likely to contribute to the promotion or improvement of the economic, social or environmental wellbeing of the whole or parts of its area, or any person resident or present in its area.
 - (b) The difference between the unrestricted or market value of the land to be disposed of and the consideration for the disposal does not exceed £2 million.
- 8.2 The Council must still comply with its duty to obtain best consideration for the restricted value and comply with normal and prudent commercial practices including obtaining the view of a professionally qualified valuer as to the likely amount of any under-value.